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Technical Advisory

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**SUBJECT:** Christmas Gifts for Kids Could Bring Insurance Woes for Parents  
(Or, How the Insurance Grinch Stole Christmas)

**BACKGROUND:** As every Personal Lines veteran knows, virtually every major event or activity that involves a family will usually have some impact on their insurance. And Christmas is no exception. Many of the gifts given to kids these days have insurance implications that the family, and their insurance agent, should be aware of.

**MAIN POINTS:** Here are some of the most common gifts for kids, with a discussion of the insurance issues, for both **Property** and **Liability**. The analysis includes both the ISO **HO-91** Program, and the new **HO-2000** Program.

**Land vehicles – Non-motorized.** Bicycles and tricycles are among the most ubiquitous Christmas gifts year in and year out. Also included in this category would be push-scooters, roller blades, skateboards, and so forth.

As **Property**, all of these types of devices would be eligible for Coverage C, with no specific dollar limitations. However, some of the more exotic bicycles can cost several thousand dollars, so consideration should be given to scheduling these.

For **Liability**, the Homeowners policy (both **HO-91** and **HO-2000**) excludes *motorized* vehicles, thus there would be coverage under Section II. While the likelihood of a lawsuit arising from these types of vehicles is probably remote, two liability issues bear analysis.

First, a lawsuit directly against a young child is generally not permitted in most instances, depending on the age of the child. However, parents are almost always also named in such suits. The legal liability of a parent for the acts of their minor children is primarily governed by state law and jurisprudence. In states such as Louisiana and a few others, there is virtually *strict* or *absolute parental liability*. In other states, parents are subject to various standards of common negligence.

Interestingly, in a case involving a 6-year-old who injured a woman with his bicycle, the Louisiana Supreme Court ruled in *Turner v. Bucher*, 308 So.2d 270 (La. 1975), that the parents were legally liable, based on the standard of *strict liability*, citing Louisiana Civil Code Article 2318.

The second liability issue involves *intentional acts* by children. As is often the case, childhood spats can result in one kid intentionally injuring another. Where parents are also named in the lawsuit, the intentional acts exclusion, while applicable to the child, is not applicable to the parent, under the Severability of Insurance provision found in Section II Conditions.

**Land vehicles – Motorized.** There is an astonishing variety of vehicles with motors which are given to kids, and they run the gamut from small, battery powered “kiddie cars” to gas-powered two and four wheel vehicles whose speed can cause any parent to turn prematurely gray.

Of the “kiddie car” type, Power Wheels is one of the most common styles, coming in various models designed to look like Jeeps, pickup trucks, a Harley-Davidson motorcycle, a Caterpillar front-end loader, and even a model called “The Eliminator.” They are powered by a 12-volt battery, and can go 2-5 mph. Advertising materials suggest that these are suitable for kids “age 3 and up.”

Other battery-powered vehicles include electric scooters and electric skateboards with names like “Bad Dog,” “CityBug,” and “Street Jammer.” Some can go in excess of 15 mph.

Leaving battery-powered types and looking at the gas-powered vehicles, there are scooters like “Go-Peds,” and an endless variety of go-cart-type models such as “The Lawn Rocket,” “The Intimidator,” and even a semi-tractor trailer version made by one manufacturer.

Moving on to even more powerful gas-powered models are vehicles in the all-terrain vehicle (ATV) category, which were first used by hunters, but now come in a wide variety of sizes and uses. Some are aimed specifically at the youth market, with small 50 cc engines, and recommended by manufactures “for use by ages 6-11.” At the other extreme are heavy-duty, 6-wheel-drive utility/work vehicles. In between are numerous types frequently driven by kids down dirt roads, in the woods, on the shoulders of busy highways, and seemingly almost everywhere else imaginable.

As **Property**, Coverage C does not apply to any “motorized land conveyance” (**HO-91** language) or “motor vehicle” (**HO-2000** language), except service or handicap-assist vehicles.

For **Liability**, there is very limited coverage, part of which is provided through interpretative analysis of certain definitions, a speculative and uncertain way to give coverage advice to insureds. Clearly covered, however, is the operation of motorized vehicles that are non-owned, so long as the vehicle is not subject to registration.

For owned vehicles, the **HO-91** policy provides coverage if the vehicles are on an “insured location,” which is defined in the policy to include eight locations (see Definitions, **4.a.** through **4.h.**)

For owned vehicles covered under the **HO-2000** policy, coverage is provided on only *five* of the eight locations that are included within the definition of an “insured location.” Those are locations **6.a., b., d., e.** and **h.** Locations not included for

use of owned vehicles are **6.c.**, **f.** and **g.** Most notably under the **HO-2000** program, “insured location” **6.c.** was removed from the locations for which coverage was provided under the **HO-91** program (as **4.c.**). This location is defined in both policies to be, “*Any premises used by you in connection with a premises described in a. and b. above.*” This particular definition of “insured location” has been the source of much discussion and disagreement, not to mention litigation, over the years. But whatever coverage was granted under **HO-91** for use of certain motorized vehicles on this particular “insured location” is clearly gone under **HO-2000**.

Another issue relating to motorized vehicles is the treatment of liability arising from negligent entrustment, negligent supervision, and vicarious parental liability. Under both the **HO-91** and **HO-2000** policies, these torts are included only if there is coverage for the occurrence caused by a covered vehicle. That is, if the operation of the vehicle is covered, there is also coverage for these ancillary torts, which usually grant coverage for a parent brought into the lawsuit. However, if there is no underlying coverage for the operation of the vehicle, then there is also no coverage for these related torts.

One last category of motorized vehicles that bears analysis are the small, radio-controlled cars, which can be battery-powered or propelled by a small engine, using a fuel called “nitro fuel.” While seemingly harmless toys at first glance, some of the more powerful racing models can go 50 m.p.h., according to the manufacturer.

In the **HO-91** program, **Coverage C – Property Not Covered**, as well as the **Liability exclusion**, uses the description “motor vehicles or all other motorized land conveyances.” Neither term is defined, so it is unclear whether or not these vehicles are covered as property, or for liability. However, Webster’s Revised Dictionary defines a “conveyance” as “the instrument or means of carrying or transporting anything from place to place.” Under that definition, it seems unlikely that these vehicles are “conveyances,” since they don’t carry or transport anything.

However, in the **HO-2000** Program, **Coverage C – Property Not Covered**, and the **Liability exclusion**, use only the term “motor vehicle.” This term is defined in the policy as, “a self-propelled land or amphibious vehicle.” Therefore, it is possible under that definition that there might not be coverage for property or liability for these vehicles.

For the wide-ranging types of vehicles discussed in the “**Land Vehicles – Motorized**” sections above, some can be endorsed onto the Homeowners Policy, and some can be added to the Personal Auto Policy.

For Homeowners **liability coverage**, **HO-91** endorsement **HO-24 13 – Incidental Motorized Land Conveyances**, (titled **Incidental Low Power Recreational Motor Vehicle** endorsement in **HO-2000**) can be used for some vehicles. However, the endorsement states that it does not apply to a motorized bicycle, moped or motorized golf cart, nor any other type of conveyance which attains speeds more than 15 m.p.h., or is subject to registration. For vehicles that are eligible, the only coverages afforded apply only to Section II – there is no property coverages provided by the endorsement.

Under **Personal Auto**, endorsement **PP 03 23 – Miscellaneous Type Vehicle Endorsement** allows mopeds, motor scooters, motor bikes, go-carts and similar vehicles, golf carts, all-terrain vehicles, and dune buggies to be added. Coverage options include Liability, Medical Payments, UM, and Physical Damage.

**Watercraft – Non-Motorized.** Popular gifts in this category include kayaks, canoes, surf boards, skim boards (“boogie boards”), wind surfers, and inflatable rafts.

As **Property, HO-91** provides under Special Limits for Coverage C, \$1,000 for “watercraft, including their trailers, furnishings, equipment and outboard engines or motors.” In **HO-2000**, the Coverage C limit is \$1,500 for “watercraft of all types, including their trailers, furnishings, equipment, and outboard engines or motors.”

For **Liability**, the exclusion in **HO-91** only applies to certain watercraft that are powered by inboard, inboard-outboard, outboard, or sail power. Assuming no motor is added to the above watercraft, unless it is an outboard engine of 25 h.p. or less, liability coverage should apply. For wind surfers, the “sail boat” exclusion does not apply to sailing vessels less than 26 feet.

**Liability** coverage for these types watercraft under **HO-2000** is the same as in **HO-91**.

**Watercraft – Motorized.** From the standpoint of watercraft gifts for kids, one of the most popular types is jet-skis and waverunners, known as “personal watercraft,” most of which are powered by water jet pump engines, which is considered a type of inboard engine. A few types use standard outboard engines.

For **Property** coverage, the see the above analysis under “Watercraft – Non-Motorized.”

For **Liability** coverage, **HO-91** excludes owned inboards of any horsepower. While water jet pump engines are not specifically mentioned, the industry consensus has been that jet-ski types are considered inboards. For those that use outboard engines, only those of 25 h.p. or less are covered.

In **HO-2000**, the analysis is the same as in **HO-91**, although “water jet pump” is added to the listed types of inboard engines excluded.

Endorsement **HO-24 75** can be added to provide **Liability** coverage for excluded watercraft. For **Property** coverage, a hull policy can be written.

For kids with parents or grandparents who have more money than sense, a new type of watercraft available is the “air cushion vehicle,” known as a hovercraft. First developed for military use, hovercraft now come in all sizes, from huge ones that ferry passengers across the English Channel, to small, one or two seat versions called “personal hovercraft.”

While **HO-91** did not mention hovercraft specifically, it was generally held that they were a type of inboard, and thus excluded for liability coverage. **HO-2000** specifically excludes hovercraft liability.

One additional category of motorized watercraft that many kids get as gifts are the radio-controlled boats, some of which are 3-4 ft. feet in length, and cost several hundred dollars. As covered **Property**, the **HO-91** limits coverage on “watercraft” to \$1,000. In **HO-2000**, there is \$1,500 for “watercraft of all types.” There is no exception for hobby watercraft, so it remains to be seen if an insurer would treat these items as “watercraft” or as toys, or some other form of eligible property.

A similar issue arises for **Liability** coverage. All these boats have what could best be thought of as inboard engines. Therefore, under both **HO-91** and **HO-2000**, the potential exists that an insurer might claim such craft are owned inboards, and thus excluded for liability. However, a logical counterargument could be made that these are not “watercraft,” and are not subject to registration as a watercraft. In addition, it could be argued that the Homeowners Policy provides coverage for hobby *aircraft*, and by analogy, hobby watercraft should also be covered.

Clarification should be sought from each Homeowners carrier. For insurers that consider hobby watercraft as excluded watercraft for liability coverage, coverage under endorsement HO 24 75 might be obtained, although such a request could initially puzzle most underwriters. An alternative might be to purchase liability coverage from one of the many hobby watercraft associations.

**Aircraft – Non-Motorized.** Balsa wood or Styrofoam gliders, kites and even paper airplanes are perennial toys for young kids. As **Property**, their value is so insignificant that a claim would be highly unlikely. However, under both **HO-91** and **HO-2000**, there is coverage under Coverage C, with no dollar limit. The Property Not Covered provision excluding coverage for “aircraft” exempts hobby craft.

The **Liability** exclusion for “aircraft” in **HO-91** and **HO-2000** does not apply to model or hobby aircraft.

**Aircraft – Motorized.** Radio-controlled aircraft are a very popular gift for kids, and there are many types and models available. In fixed wing aircraft, planes with a 6 ft. wingspan are not uncommon. Other models include helicopters of many sizes, as well as rockets, which range from the small 12-inch size to many models that are five or six feet in length.

For **Property** and **Liability** coverages, the above analysis for the non-motorized aircraft also applies to motorized aircraft.

**NECESSARY  
ACTION:**

Circulate this Technical Advisory to all Personal Lines staff.