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Technical Advisory

TA 255

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Subject: Handicap Assist Vehicles vs. Personal Mobility Vehicles

Background: If it walks like a duck, and quacks like a duck, is it always a duck? The answer to this perennial riddle is, of course, “not necessarily.”

When it comes to identifying what is and is not a “handicap assist vehicle” in the Homeowners Policy, the same problem exists.

Handicap assist vehicles trace their origins to wheelchairs. Wheelchairs were known to exist in China as early as the 6th century AD. They gained greater usage in Europe beginning in the 16th century (King Phillip II of Spain had one in 1595), but did not see widespread service in the United States until after the Civil War.

Until the 1980's, wheelchairs remained simple devices, but the development of lightweight materials, powerful yet compact batteries, and computer technology totally revolutionized them into high-tech marvels and medical wonders.

In the 1990's, the traditional wheelchair morphed into medical scooters, and these soon gained wide popularity and usage. Not only did the traditional wheelchair user enjoy greater mobility, but people who had not previously used wheelchairs began to find their limited mobility greatly increased with the powered medical scooters.

As a result, many stores and amusement parks began making the vehicles available. This brought even more vehicles into service, with an ever-growing usage by people who merely needed mobility assistance to cover the vast distances of huge shopping malls and theme parks, although their medical condition did not confine them permanently to wheelchairs. In fact, their popularity often caused frequent shortages of the vehicles at such locations, as the usage surpassed the need by traditional wheelchair customers. This in turn sparked a substantial increase in the number, styling, and capabilities of a wide variety of powered scooters.

Over the last few years, the utilization of these vehicles has mushroomed into nothing short of a mini-revolution in personal transportation. Manufacturers now market some

models as “personal mobility vehicles,” meant to broaden the market beyond the traditional wheelchair users, and reach a wider number of people with a variety of medical and health conditions that limits their mobility.

With increased mobility options, a growing number of people can now enjoy a far greater range of activities. For example, most major U.S. cities now have companies that provide “scooter tours” for tourists (often describing themselves as “mobility enhancement companies”). The larger companies have hundreds of locations, so rental opportunities are abundant. A recent *Wall Street Journal* article called them “The Sidewalk SUV.”

Some scooter rental companies even have rental locations at cruise ship docks, and permit the vehicles to be rented when people are departing on cruises, for mobility around the ship, and at ports of call.

Rental of these personal mobility vehicles is reported to be skyrocketing at locations such as Mall of America, Disney World, Dollywood and the like. Clearly, more and more people with limited mobility are able to enjoy more varied recreational activities.

At the same time, studies done by the industry, as well as large providers of these vehicles such as theme parks, show that a growing number of vehicle rental customers simply opt for convenience, with medical condition or impairment not a factor. One 37-year-old rental customer at Disney commented that he chose to ride through the theme park, in order to save energy for dancing that night. “I’m pretty healthy,” he said. “Just lazy, I guess.”

This raises a potential interpretive problem with the language in the Homeowners Policy, which categorizes vehicles as “*designed to assist the handicapped.*” While the traditional wheelchair clearly fits that description, these new vehicles are being used by a larger group of people with varying degrees of medical and health issues, beyond the more limited group considered “handicapped.” And in some cases, they are being used by people solely for personal convenience and not medical or health reasons.

Main Points: Given that there is a wide variety of “handicap assist vehicles” and “personal mobility vehicles,” used by both handicapped and non-handicapped riders, it is important for the insurance practitioner to understand how the Homeowners Policy responds, and what endorsements if any would apply.

Property Coverage

Coverage for damage to these vehicles is found in either Section I – Coverage C, and/or Section II – Liability.

Section I – Coverage C. Here is the relevant excerpt from the Homeowners Policy (HO-2000):

Coverage C – Personal Property

1. Covered Property

We cover personal property owned or used by an "insured" while it is anywhere in the world. After a loss and at your request, we will cover personal property owned by:

- a. Others while the property is on the part of the "residence premises" occupied by an "insured"; or
- b. A guest or a "residence employee", while the property is in any residence occupied by an "insured".

Property Not Covered

We do **not** cover:

- c. "Motor vehicles".

(2) We **do** cover "motor vehicles" not required to be registered for use on public roads or property which are:

- (b) **Designed to assist the handicapped;**

Analysis. (1) Coverage C applies to both owned and non-owned personal property, so vehicles that are owned, rented or borrowed are eligible for coverage, subject to other policy conditions.

(2) Coverage C would only apply to motorized vehicles "*designed to assist the handicapped.*" Note, however, that the policy only refers to the *design* of the vehicle, and not to who was using it or why. However, in Section II – Liability, there is a requirement that the vehicle was "*being used to assist a handicapped person.*" (See analysis in the Liability section below.) Section I contains no such requirement.

As noted in the discussion above, users of the newer types of "personal mobility vehicles" include not only the traditional wheelchair user, but a wide range of people whose health or medical condition does not necessarily qualify them as "handicapped." Additionally, there is some usage of these vehicles by people for sheer convenience, with health or medical condition not a factor (as illustrated by the visitor at Disney).

However, coverage provided under Coverage C turns on the *design* of the vehicle, and not the user. Many manufacturers of these newer types of mobility vehicles promote their use for the dual purposes of mobility assistance, or personal convenience. So it could reasonably be argued that all these vehicles are designed to assist the handicapped. Note that the form language does not require the vehicles to be "*designed exclusively to assist the handicapped.*"

(3) There is no sub-limit for these vehicles, so full Coverage C limits would be available, subject to damage being caused by a covered peril. However, owners of high value, specialty motorized wheelchairs should consider broader coverage than named perils,

either by making Coverage C subject to special causes of loss (so called "open perils" or "all-risk"), or by scheduling the vehicles under a specialty property policy. Given that some of the specialized motorized wheelchairs are highly computerized and can cost in excess of \$10,000, an inland marine coverage form would be recommended.

(4) Since there is no territorial limit in the Homeowners Policy, insureds who own, rent or use eligible vehicles would have worldwide coverage under their Coverage C, so long as a covered peril was the cause of loss.

Property Coverage - continued

Section II – Liability. There are two provisions in Section II which must be reviewed for property damage to these vehicles: Property Damage Liability, and Damage To Property Of Others. Here are the relevant policy excerpts:

SECTION II – EXCLUSIONS

Coverage E – Personal Liability

Coverage E does not apply to:

3. "Property damage" to property rented to, occupied or used by or in the care of an "insured". This exclusion does not apply to "property damage" caused by fire, smoke or explosion;

SECTION II – ADDITIONAL COVERAGES

We cover the following in addition to the limits of liability

C. Damage To Property Of Others

1. We **will** pay, at replacement cost, up to \$1,000 per "occurrence" for "property damage" to property of others caused by an "insured".
2. We **will not** pay for "property damage":
 - a. To the extent of any amount recoverable under Section I;
 - b. Caused intentionally by an "insured" who is 13 years of age or older;
 - c. To property owned by an "insured";
 - d. To property owned by or rented to a tenant of an "insured" or a resident in your household; or
 - e. Arising out of:
 - (1) A "business" engaged in by an "insured";
 - (2) Any act or omission in connection with a premises owned, rented or controlled by an "insured", other than the "insured location"; or
 - (3) The ownership, maintenance, occupancy, operation, use, loading or unloading of aircraft, hovercraft, watercraft or "motor vehicles".

This exclusion e.(3) does not apply to a "motor vehicle" that:

 - (a) Is **designed for recreational use off public roads**;
 - (b) Is not owned by an "insured"; and
 - (c) At the time of the "occurrence", is not required by law, or regulation issued by a government agency, to have been registered for it to be used on public roads or property.

Analysis. (1) Under the provisions of liability exclusion 3, there is no property damage liability coverage to any non-owned vehicles that are in the insured's care, custody or control, unless the damage is caused by fire, smoke or explosion.

(2) The Damage To Property Of Others provision excludes damage to motor vehicles, but contains an exception for a vehicle "*designed for recreational use off public roads.*" There is no separate provision for handicap assist vehicles. For some of the mobility vehicles that are designed and equipped for outdoor use, such as those for "scooter tours," it could logically be argued that the real purpose of these vehicles to provide or enhance the recreational opportunities for handicapped people. Given that many of the vehicles under discussion are designed for the dual purpose of mobility impairment assistance and/or personal convenience, the \$1,000 would seem to apply.

Liability Coverage

Section II provides coverage for bodily injury or property damage for which an insured is legally liable, except as excluded. While there is an exclusion for motor vehicles, there is an exception for handicap assist vehicles. Here is the relevant excerpt:

SECTION II – EXCLUSIONS

A. "Motor Vehicle Liability"

2. If Exclusion A.1. does not apply, there is still no coverage for "motor vehicle liability" unless the "motor vehicle" is:

c. **Designed** to assist the handicapped **and**, at the time of an "occurrence", it **is**:

- (1) **Being used** to assist a handicapped person; or
- (2) Parked on an "insured location";

Analysis. (1) There is a dual requirement for the exception to apply, in that the vehicle: (a) must be *designed* to assist the handicapped, and (b) is *being used* to assist the handicapped person. (Only HO-2000 has this dual requirement; the HO-91 edition has no such requirement about the use of the vehicle, only the design.)

(2) Most experts hold that the "*designed to assist*" requirement should be read broadly, and thus many of the dual purpose vehicles that are being discussed would fall under a reasonable interpretation of that provision. As noted in the discussion under the Property Analysis section, the language does not say that the vehicle be designed exclusively for handicap use.

(3) It is unclear just when a person's medical condition qualifies him or her to be a "*handicapped person*" under policy provisions (there is no policy definition). Thus, any person with the inability to walk long distances who decides to use any of these vehicles for assistance with their mobility would seem logically to be covered for any bodily injury or property damage they become legally liable for.

A person who has qualified for a handicap parking decal, which usually requires certification by a medical professional, would seem to meet the criteria, but others might

be using these vehicles due to a medical or health condition for which they have not sought a handicap parking decal, but are legitimately using the vehicle in a similar way as a “handicapped” person.

(4) At the same time, anyone riding any of these vehicles purely for personal convenience or enjoyment, as illustrated by the Disney visitor’s description of “just lazy, I guess,” would not be covered under this provision.

However, Section II does provide coverage for use of a non-owned “recreational vehicle” worldwide, so the non-impaired user would find coverage under this provision for his or her legal liability for bodily injury and property damage.

(5) In situations where Section II applies, there is no territorial limitation in the Homeowners Policy, so insureds who use these vehicles for are covered anywhere in the world, including while on cruises or in any port of call, for any bodily injury or property damage they become legally liable for.

Necessary Action: Circulate this Technical Advisory to all appropriate Personal Lines staff.