

# Technical Advisory



TA 315

December 17, 2014

**Subject:** Insurance vs. the Christmas Grinch

**Background.** If “Dr. Seuss” (Theodor Geisel) had been in insurance, he could have written a sequel to “How the Grinch Stole Christmas,” explaining to the merry residents of Whoville how insurance would cover their property stolen by the Grinch. And ironically, there are still many Grinches lurking about at each Christmas, looking to steal presents, gift cards and credit cards, yard decorations, and almost anything else they can get.

Another way Grinches steal Christmas is from injuries that happen from kids’ toys, especially motorized vehicles, which are so prevalent today. This includes small battery-powered vehicles such as “Barbie Cars,” “Razor Scooters,” and similar vehicles, as well as larger, gas-powered vehicles ranging from go-carts to ATVs. And while remote-controlled (“RC”) aircraft have long been a staple for Christmas, the advent of “drones” has opened a new chapter for Grinches to cause mischief.

**Main Points.** In the following situations below, the coverage form excerpts and commentary are based on ISO forms. Proprietary forms may be different.

**Situation #1: Theft of items from an auto.**

Coverage for personal property (Coverage C) is worldwide, theft is a named peril, and there is no blanket exclusion for theft from an auto. There are, however, some limitations. The following limitations apply for theft, whether from an auto or elsewhere:

**HO 00 03 05 11**

**Section I – Property Coverages**

**C. Coverage C – Personal Property**

**3. Special Limits Of Liability**

*The special limit for each category shown below is the total limit for each loss for all property in that category. These special limits do not increase the Coverage C limit of liability.*

*e. \$1,500 for loss by theft of jewelry, watches, furs, precious and semiprecious stones.*

*f. \$2,500 for loss by theft of firearms and related equipment.*

*g. \$2,500 for loss by theft of silverware, silver-plated ware, goldware, gold-plated ware, platinumware, platinum-plated ware and pewterware. This includes flatware, hollowware, tea sets, trays and trophies made of or including silver, gold or pewter.*

These limitations apply for any covered peril, to property that might be in an auto during the shopping season:

**HO 00 03 05 11**

**Section I – Property Coverages**

**C. Coverage C – Personal Property**

**3. Special Limits Of Liability**

*The special limit for each category shown below is the total limit for each loss for all property in that category. These special limits do not increase the Coverage C limit of liability.*

**a.** *\$200 on money, bank notes, bullion, gold other than goldware, silver other than silverware, platinum other than platinumware, coins, medals, scrip, stored value cards and smart cards.*

**j.** *\$1,500 on portable electronic equipment that:*

*(1) Reproduces, receives or transmits audio, visual or data signals;*

*(2) Is designed to be operated by more than one power source, one of which is a "motor vehicle's" electrical system; and*

*(3) Is in or upon a "motor vehicle".*

**k.** *\$250 for antennas, tapes, wires, records, disks or other media that are:*

*(1) Used with electronic equipment that reproduces, receives or transmits audio, visual or data signals; and*

*(2) In or upon a "motor vehicle".*

If credit cards are stolen, there is no intrinsic value in the physical card itself, but fraudulent use is the obvious exposure. Here is the special provision for credit cards:

**HO 00 03 05 11**

**Section I – Property Coverages**

**E. Additional Coverages**

**6. Credit Card, Electronic Fund Transfer Card Or Access Device, Forgery And Counterfeit Money**

**a.** *We will pay up to \$500 for:*

*(1) The legal obligation of an "insured" to pay because of the theft or unauthorized use of credit cards issued to or registered in an "insured's" name;*

*(2) Loss resulting from theft or unauthorized use of an electronic fund transfer card or access device used for deposit, withdrawal or transfer of funds, issued to or registered in an "insured's" name;*

*(3) Loss to an "insured" caused by forgery or alteration of any check or negotiable instrument; and*

*(4) Loss to an "insured" through acceptance in good faith of counterfeit United States or Canadian paper currency.*

*All loss resulting from a series of acts committed by any one person or in which any one person is concerned or implicated is considered to be one loss.*

*This coverage is additional insurance. No deductible applies to this coverage.*

**b. We do not cover:**

(1) Use of a credit card, electronic fund transfer card or access device:

(a) By a resident of your household;

(b) By a person who has been entrusted with either type of card or access device; or

(c) If an "insured" has not complied with all terms and conditions under which the cards are issued or the devices accessed; or

(2) Loss arising out of "business" use or dishonesty of an "insured".

**c. If the coverage in a. above applies, the following defense provisions also apply:**

(1) We may investigate and settle any claim or suit that we decide is appropriate. Our duty to defend a claim or suit ends when the amount we pay for the loss equals our limit of liability.

(2) If a suit is brought against an "insured" for liability under a.(1) or (2) above, we will provide a defense at our expense by counsel of our choice.

(3) We have the option to defend at our expense an "insured" or an "insured's" bank against any suit for the enforcement of payment under a.(3) above.

**Situation #2: Pet knocks over Christmas tree, causing fire.**

Whether it's Callie the Curious Cat, or Klutz the St. Bernard, animals and Christmas trees just don't seem to get along. There have actually been cases where a pet knocked over the tree, sparking a fire. There was also a recent case where a large pet Iguana knocked over the heating lamp he was resting under, and the ensuing fire did major damage to the house. Luckily, the family rescued the Iguana.

In such cases, does the Homeowners Policy cover the fire damage? At first glance, there is an exclusion for Coverages A and B for damage caused by "Animals owned or kept by an insured." [See **2.c.(6)(i)** below.] However, immediately following the reference to the animal exclusion is a give-back for any ensuing loss caused by the animal. Therefore, the exclusion would apply only to the damage done to the tree and ornaments (or to the heat lamp, in the case of the Iguana), while the fire damage to the house would be covered. And any personal property (Coverage C) that was damaged by the fire would be covered as a named peril. [See **B.1.** below.]

In contrast, if Klutz got accidentally closed up in a room, and scratched the hardwood floor trying to get out, that direct damage is excluded. But if he clawed through the drywall and tore a water pipe loose, causing major leak, the clawing damage to the drywall would be excluded, but the ensuing water damage to any part of the home (under Coverage A) would be covered.

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**Section I – Perils Insured Against**

**A. Coverage A – Dwelling and Coverage B – Other Structures**

1. We insure against direct physical loss to property described in Coverages A and B.

2. We do not insure, however, for loss:

**c. Caused by:**

(6) Any of the following:

(i) *Animals owned or kept by an "insured".*

*Under 2.b. and c. above, any ensuing loss to property described in Coverages A and B not precluded by any other provision in this policy is covered.*

**B. Coverage C – Personal Property**

*We insure for direct physical loss to the property described in Coverage C caused by any of the following perils unless the loss is excluded in Section I – Exclusions.*

**1. Fire Or Lightning**

**Situation #3: Motorized vehicles for kids.**

There is a mind-boggling array of both battery-powered and gas-powered vehicles designed for kids. And a few days after Christmas, many parents wonder, “What were we thinking?” or “It seemed like a good idea at the time.” All these vehicles make any insurance person cringe.

Originally made popular by the Barbie Car, battery-powered vehicles today come in every conceivable model, from a little one-seat Disney Frozen Convertible, to two-seat models of the Dodge Viper, Dune Racer, Hummer, and so on. There are also battery-powered motorcycles, scooters and skateboards. For older kids, gas-powered vehicles include models based on famous autos, as well as choppers, scooters, street-legal trikes, utility vehicles, and the traditional go-cart.

One fundamental question about how the Homeowners Policy treats coverage issues for these vehicles is whether or not they are considered “motor vehicles” under the policy, for both personal property (Coverage C) and liability and medical payments (Coverages E&F) losses. Here is the definition:

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**Definitions**

*"Motor vehicle" means:*

*a. A self-propelled land or amphibious vehicle;*

This broad definition essentially puts all these motorized vehicles in the same category as the family car. However, there are some exceptions for property coverage.

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**Section I – Property Coverages**

**C. Coverage C – Personal Property**

**4. Property Not Covered**

*c. "Motor vehicles".*

*This includes a "motor vehicle's" equipment and parts. However, this Paragraph 4.c. does not apply to:*

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

*a) Used solely to service a residence; or*

*(b) Designed to assist the handicapped;*

Since the only two exceptions are for service vehicles and handicap-assist vehicles, a literal reading of the coverage form indicates that none of the motorized vehicles for kids would be eligible for Coverage C. However, some courts have recognized specific cases where the vehicle in question was deemed to be a “toy,” and not subject to the restriction in the Homeowners Policy. This may not be particularly significant, since the price of these tyke-size battery-powered vehicles is often less than the Homeowners Policy deductible.

The definition of “motor vehicles” applies throughout the Homeowners Policy, including both property (Section I – Coverage C) and liability and medical payments (Section II – Coverages E&F). Therefore, the liability and medical payments exclusion for “motor vehicles” applies to these motorized vehicles the same as it does for personal property (see above). However, there are some additional exceptions to the exclusion in Section II, which provide some limited coverage.

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**Section II – Exclusions**

**A. “Motor Vehicle Liability”**

*1. Coverages E and F do not apply to any "motor vehicle liability" if, at the time and place of an "occurrence", the involved "motor vehicle":*

*a. Is registered for use on public roads or property;*

*b. Is not registered for use on public roads or property, but such registration is required by a law, or regulation issued by a government agency, for it to be used at the place of the "occurrence";*

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

*d. Designed for recreational use off public roads and:*

*(1) Not owned by an "insured"; or*

*(2) Owned by an "insured" provided the "occurrence" takes place:*

*(a) On an "insured location" as defined in Definition B.6.a., b., d., e. or h.; or*

*(b) Off an "insured location" and the "motor vehicle" is:*

*(i) Designed as a toy vehicle for use by children under seven years of age;*

*(ii) Powered by one or more batteries; and*

*(iii) Not built or modified after manufacture to exceed a speed of five miles per hour on level ground;*

Under Exclusion **A.1.a.-b.**, local or state laws may require the registration of certain types of gas-powered vehicles that are designed for older kids, even if operated on the streets of a subdivision. In such case, there would be no Section II coverage.

For vehicles not described in Exclusion **A.1.a.-b** above, the Motor Vehicle Exclusion still applies for all other “motor vehicles,” with exceptions for certain owned recreational vehicles, as well as all non-owned vehicles. [See **A.2.d.(1)(2).**] It is important to note that the exception for certain described

battery-powered toy vehicles designed for children is newly added to the HO-2011 coverage forms, and does not appear in prior editions of the ISO Homeowners Policy.

The only optional endorsement to the Homeowners Policy offered by ISO is the Incidental Low Power Recreational Motor Vehicle Liability Coverage Endorsement (HO 24 13 05 11). This endorsement broadens coverage to apply for vehicles not built or modified to exceed 15 mph, but does not include coverage for motorized bicycles, motorized scooters, mopeds, or motorized golf carts.

However, under the Personal Auto Policy, the Miscellaneous Type Vehicle Endorsement (PP 03 23 01 04) can add coverage for a wide variety of vehicles, including the following eligible types described in the ISO Personal Vehicle Manual. Excerpt:

**ISO Personal Vehicle Manual**

**Rule 19. Miscellaneous Types.**

1. *Motorcycles, Mopeds, Motorscooters, Motorbikes, Go-Carts and Any Other Similar Motor Vehicles Not Used For Business Purposes*
2. *Snowmobiles and All-Terrain Vehicles*
3. *Dune Buggies*
4. *Golf Carts*
5. *Low Speed Vehicles (A low speed vehicle is a motor vehicle that is designed for use on public roads, has a maximum speed of greater than 20 miles per hour but not greater than 25 miles per hour and complies with the safety standards established in NHTSA regulation 49 C.F.R. 571.500.)*

In addition, some markets offer specialty policies for certain types of miscellaneous vehicles.

**Situation #4: Hobby aircraft and drones.**

Under Section I and Section II, coverage is excluded for “aircraft,” which is defined as “*any contrivance used or designed for flight except model or hobby aircraft not used or designed to carry people or cargo.*”

The exception for model or hobby aircraft is very broad, and includes remote-controlled (RC) aircraft of any size or type, including such models as the famous WW-II B-17 *Memphis Belle* with a 6-ft. wingspan, as well as jet-powered aircraft, and helicopters. Also included in the exception are hobby rockets – some of which are over 6 feet long and 4 inches in diameter, capable of flying thousands of feet into the air.

The growing popularity of “drones” raises new question regarding coverage. Since hobby aircraft are covered unless they are designed to carry people or cargo, the issue is whether or not a camera, GPS, or other detachable equipment would be considered “cargo.” Except for that issue, drones are essentially another type of “rotary wing” hobby aircraft, in the same category as a traditional helicopter.

However, any business use of an aircraft, including a drone, would be excluded under the Homeowners Policy. And with the increasing use of drones in business, from farming to real estate sales, it is important to note that the CGL/BOP also exclude any type of aircraft (not defined), which is “owned or operated by or rented or loaned to any insured.” However, some commercial insurance markets are beginning to offer coverage for drones.

**Necessary Action:** Circulate this Technical Advisory to all appropriate agency staff.

**Please note that this Technical Advisory is intended to be educational and is not legal advice upon which you should rely. Please seek any legal opinion you may need from a qualified attorney.**