Jim's Perspective…

Liability Insurance Claims

During my time as an attorney at Farmers Mutual of Nebraska, I estimate that over all of my years at the company, I managed about a total of 2,000 third-party liability claims where suit was filed at the trial court level. I kept all pending lawsuits in a three-ring binder. In the binder I maintained a one or two page summary of the basic facts of the case and then I listed periodic calendar dates in which something substantive might have occurred about the case. The summaries were maintained in alphabetical order. This summary just gave me a brief narrative of what was happening so that I did not have to get out the entire paper file and review what was going on should I suddenly receive a call about a file, or receive correspondence on a file. Once the lawsuit was resolved by settlement or trial, I didn't throw the summaries away. I saved them. I still have most of them. I have always been amazed at all the possible liability scenarios that unfolded under the liability coverage. Just when I thought I could never see anything more unusual than the most recent liability lawsuit I received, soon, I would receive an even more unusual lawsuit.

There was a leg wrestling liability lawsuit; negligent bowling; negligent dancing; negligent throwing of a discuss in a track meet; and negligence claims which occurred on the golf course. The farm was always a business with many risk management exposures. Workers got caught in augers and were injured. Livestock escaped confinement and ended up on a highway which resulted in a car/livestock accident. The risk exposures in a farming operation were a big learning experience for me, since I grew up in a city and had no experience with farming.

The negligent leg wrestling claim involved a boy and a girl who were leg wrestling in the basement. The girl won the match. The boy was upset and proceeded to pounce on the girl's leg causing injury to the leg. This claim of course involved application of the intentional act exclusion. It was eventually settled. The boy claimed he was still leg wrestling and had no intent to harm the girl.

You may recall the 1977 dancing movie, *Saturday Night Fever*, staring John Travolta. The dancing craze created by this movie extended into the early 1980's which is when the negligent dancing claim occurred. The boy was twirling the girl around in front of him on the floor at a dance club, and his elbow struck the girl in the nose which broke the nose. This lawsuit was tried to a jury and a verdict was returned in favor of the boy, the defendant. The point was that the boy was performing an ordinary dance move, and was not negligent. Also, to the extent the dance move involved risk of injury, that risk was assumed by the girl. Needless to say, the relationship between the boy and the girl came to an end!

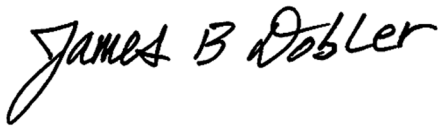
There was a foursome playing golf one afternoon. They were using two golf carts owned by the country club. They were on the fifteenth hole and set to tee off. Two golfers riding in the front cart situated next to the tee box, teed off first. A golfer in the second or last golf cart located directly behind the first golf cart, then teed off. After hitting the ball, the golfer went back to the second cart and sat down behind the wheel of the cart waiting for the fourth golfer to tee off. Suddenly, the second cart rolled forward and pinned one of the golfers in the first cart because the golfer was standing behind the cart fiddling with the golf bag. The injured golfer sustained a fractured ankle and nerve damage to the left leg. The second cart was never turned on, and the golfer in that cart

said the brake was not released. It was never clear how the cart rolled into the golfer behind the first cart. The injured golfer sued the golf partner in the second cart. The injured golfer also sued the country club for negligent maintenance of the golf cart. The injured golfer's spouse also pursued a loss of consortium claim. This liability claim involves a certain personal aspect of what can occur in a liability claim. The golfer in the second cart felt very bad for the golfing friend's injury. This golfer in the second cart had feelings of responsibility for not somehow preventing this from happening. I do not blame the golfer in the second cart for feeling that way, but this sense of responsibility was something that ultimately caused the claim to be settled. Was the golfer in the second cart actually negligent? Technically, probably not. But often in a tort liability claim pending in a court of law that will ultimately be decided by twelve jurors, emotion, sympathy and appearance, or likability, of the parties to the lawsuit can go a long ways towards deciding the outcome of the case.

To this day, when I am riding in a golf cart and my cart approaches the rear of the cart in front of us as we all arrive at the next tee box, I always think of this claim.

I could go on and on! Of course there were many auto accidents. Back in the 1980's there were no air bags or crash avoidance systems in cars. There were many serious injuries. Many claims and lawsuits.

Occasionally, at a social function, someone might ask me what kind of job I had. I explained I worked at an insurance company and primarily worked with auto, homeowners and farm insurance policies. Invariably, the person asking me the question would roll his or her eyes and infer that nothing could be more boring than reading insurance policies. But the reality of working with these policies is that I experienced the ups and downs of everyday life of people all across Nebraska, and even the United States. I realized, and came to appreciate, that insurance significantly affects peoples' lives every minute of every day. What a unique financial services product. For a payment made today, an insurance company agrees to be around in the future to pay a liability claim brought against you. The company agrees to assume that risk exposure of the individual or business. It is the "pay me now" and "I will perform in the future" aspect of an insurance policy which is a fundamental reason why we have state insurance regulation. Also, the insurance contract is described by the courts as a "contract of adhesion" which means that it is completely written by one party to the contract and accepted by the other party to the contract without that other party knowing much about what the contract provides. In most contracts, there is a legal requirement that the parties to the contract act "in good faith" as they perform their part of the contract. However, in an insurance contract the insurer is required to act at a higher standard of "utmost good faith." This is not to the level of a fiduciary, but it is a higher standard than what applies to the typical contract. When you consider the totality of how the insurance marketplace works, it is, I think, quite amazing. It is an incredible invention by mankind.



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