***Thinking of a drone for a holiday gift? Make sure to include an insurance policy in your stocking.***

Currently, the Federal Aviation Administration currently does not require you to purchase drone insurance to fly a recreational drone. So, should you get a policy anyway? Our survey says, “yes!” At the very least, you need to review your homeowner’s policy carefully, so you are aware of what is and is not covered in the unfortunate case that your drone injures someone or damages property. Likewise, if you are an insurance industry professional, such as a claim representative or adjuster, you need to understand what exactly is and is not covered by your company’s policy.

The issue of drones in the context of homeowner’s insurance policies does not yet have any legal precedent in New York State. In 2018, a case involving a drone accident was heard by the US District Court for the Central District of California. In that case, a drone was being used to take photos at a wedding, when it flew too low and hit a guest in the eye, causing serious personal injuries that necessitated surgery, and unfortunately, caused the guest to lose her vision in that eye. The court had to determine whether the aircraft exclusion in the applicable policy excluded coverage for the insured’s liability arising from the use of the drone. In that matter, the policy at issue was a commercial policy (versus a homeowner’s policy), but the wording of the pertinent exclusion for bodily injuries arising out of the use of an aircraft is essentially identical to the wording of the exclusion in a typical homeowners (or renters) insurance policy.

The court held that a drone, as a vehicle “for traveling through the air,” constitutes an “aircraft” pursuant to the plain and ordinary meaning of the word “aircraft,” citing to the Merrian-Webster Collegiate Dictionary. The court reasoned that the fact that the drone was unmanned and operated by a remote user does not change the fact that it is, indeed, an “aircraft.” Furthermore, the court pointed out that the word “aircraft” does not require the carrying of passengers or cargo, such as in the instance of a traditional airplane or helicopter. Therefore, the court found that the drone constituted an “aircraft” under the policy, which specifically excludes coverage for bodily injuries arising out of the use of aircraft operated by the insured.  Ultimately, per the court, the insurance carrier had no duty to defend or indemnify the drone owner. *Philadelphia Indemnity Insurance Co. v. Hollycal Production Inc.*, No. 5:18-cv-00768-PA-SP (C.D. Cal. Dec. 7, 2018).

With the rising popularity of recreational drone usage, this issue is likely to be brought before the courts in New York at any time. We believe it will be decided similarly to the above-referenced case out of the Central District of California. Whether you are an insured under a homeowners policy, or an insurance industry professional, now is the time to review your policy closely. Some carriers are keeping up with the drone trend and explicitly defining “aircraft” and/or “model aircraft” in their policies to make the policies clearer. For some lucky insureds, their homeowners’ policies may include exceptions to the aircraft exclusion, providing coverage in the instance of a model aircraft and/or drone accident. That being said, there are many companies now offering specific liability policies related to drones and/or model aircraft. Obtaining a drone specific policy would help ensure you are covered in the event of an accident.

We will continue to keep an eye out to see what happens when this matter is addressed in New York. We may be updating you in the new year!