

Does your car club offer insurance to members in exchange for commission from insurers?

The impact on your Liability Insurance.

In recent times various classic car clubs have been approached by insurers to act as 'agents' for insurance products in exchange for kick-backs (usually in the form of a cash commission). I have been asked to provide an overview on the liability issues and how it affects your existing liability insurance.

This is a subject which people get confused about, apart from those that work in the industry and even then there are some very curly situations which require some investigation to establish liability and negligence issues.

Firstly the author of this article is not a lawyer, but because of the amount of liability issues I get involved with I have a very good understanding of how it all works. As one lawyer pointed out to me "in New Zealand we don't have a justice system, we have a legal system". Thus proof of negligence is based in a commercial sense on the activities of one person compared to the common law and contractual law imposed upon us all. Thus for proof of negligence it must be proven.

The purpose of this article relates to contractual law and the law surrounding acting as an agency for a product or service. Both businesses and not-for-profit organisations are regularly encouraged to increase earning capacity and we enter into deals unwittingly with the best of intentions on the basis of increasing returns for the organisation. However, we need to be aware that **by accepting commissions from any source for product sold to friends or business associates makes us automatically a sub-agent** of the principal because we are being remunerated for efforts on the principal's behalf.

Thus, if the proverbial hits the fan and the product does not work as it should or does not do as promised then under both the Sale of Goods Act and Consumer Guarantees Act you can be equally as liable as the principal. Secondly, if there are damages awarded against you then you can be held liable to the same extent as the principal.

When you receive commission from an insurance company, broker or agent for product sold you automatically become a sub-agent and **you are subject to the same laws and rules of contract as a company or individual working with in the insurance industry**. Because of the high level of liability risk in this industry it is necessary to be fully informed before making a decision to become involved in this sort of arrangement.

Some of you reading this article will be secretaries and treasurers of car clubs or for that matter historic vehicles of different types. Some of you will be thinking "what's this got to do with us?" Well for those that have been prudent enough to buy the Federation of Motoring Club's Combined Association Liability Policy, the product will **not** cover the club for this type of exposure for three reasons:

1. The description of the club activities did not include being a sub-agent for an insurance company – because it was not specifically declared as a club activity;
2. If you did not disclose it when purchasing the policy, then the insurance company would decline the claim;
3. Insurers see the insurance practitioner as being a particularly risky occupation and would decline to cover this activity.

The final result is that if you wish to maintain the income from promoting insurance products through your club in exchange for revenue whilst not being insured for the club's liability risk, in the event of a loss you need to consider:

- a) **Accepting the risk** knowing that you are not covered by insurance;
- b) **Requesting special cover** for the club. There will be an additional premium and it is likely to be expensive. As an insurance broker we have an excess of \$10,000 and the premium for the minimum level of cover of \$2 million is over \$2,000. Therefore if you do wish to insure for this risk then the revenue earned needs to exceed the cost of the insurance to make it economically feasible.

If you don't wish to continue earning income in this fashion because of the exposure then simply politely request that the insurance company/broker/agent that you are dealing with refrains from paying you commission. The sooner you do this the sooner you can eliminate your liability risk.

Please note that your **liability is retro-active from the time that you started to earn an income**. So **although you have stopped you may still be liable as a sub-agent for a previous incident**.

Some of you may be thinking that selling insurance is not hard. "Anyone can do it as we all need it." You're right. The difficulty is dealing with a claim which is not covered because the policy was not wide enough for the activities, did not provide the correct level of cover or the insured person was not totally honest in his submission.

I couldn't think of anything worse than having to front up to a colleague who had purchased insurance to advise that as he had lied on the proposal form that his claim for his damaged vehicle has been declined. (I had to do this to a relative's husband a few years ago and it was not a nice situation to be in.)

Therefore when entering an arrangement of earning commission please investigate the relevant issues carefully. If unsure, please approach your insurance broker for further information about the impact on existing liability insurances. The additional revenue may seem very welcome but it may not be worth it unless handled appropriately.

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