

The Newsletter[®]

A newsletter by the **Law Offices of J. Michael Hayes**, devoted to relevant issues of negligence and liability.
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SUPPLEMENTAL SPOUSAL LIABILITY INSURANCE

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Do You Have Spousal Coverage On Your Car?

This is a new statute that changes a law in effect for the last 65 years. Previously, spouses were not insured due to an exclusion in all automobile policies where the other spouse was at fault. Carriers refused to write or provide such coverage, even upon written request. That restriction and limitation has been repealed.

As of January 1, 2003, couples are able to obtain coverage for the negligent acts of their spouse in the operation of their motor vehicle. The specific statute is Insurance law §3420 2(g)(1). That section provides that "Upon written request ...and upon payment of a reasonable premium" supplemental spousal liability insurance shall be provided up to the liability limits.

Practical Tip: Send that notice to your insurance agent with a small check via certified mail, return receipt requested. Advise your agent that you want the coverage to be effective "immediately". According to the statute, you should have the coverage as of the date of the delivery of your request. You will have proof in the form of the certified receipt.

This law has several beneficial applications. First, it provides **additional** coverage in the event the passenger spouse is injured and both drivers are at fault. It also provides coverage where previously there was none. That is, where the spouse driver was solely responsible for the accident, there is coverage.

While there may be a general reluctance to make a claim under your insurance policy where your spouse was negligent, that is the exact purpose of this coverage. You can insure yourself and your loved ones in the unfortunate event of negligence. The cost of their coverage is very small.

Some carriers are automatically including it in their existing policies without charge. Some carriers are requiring the formal request before the coverage will be provided. Others are trying to take the position that the coverage might not be available until the policy is renewed. That is a false and inaccurate argument. Do not be dissuaded. **Send your certified letter!**

What is the "Duty" of a Landowner?

A recent case from New York's highest court discusses the obligations and standards of care imposed upon responsible landowners. At issue was whether the failure of an owner to light an urban area constituted a "defect". *Peralta v. Henriquez*, 100 NY2d 139, 760 NYS2d 741 (2003)

The court considered in their decision political and public policy factors including the possible

"proliferation of claims, the likelihood of unlimited or insurer-like liability, disproportionate risk and reparation allocation and public policies affecting the expansion or limitation of new channels of liability".

The court also recognized and discussed their assumption that "a duty of care must be based upon an assessment of its efficacy in promoting social benefits as against its cost and burdens".

Ultimately, the court reaffirmed the existing general standard of care based upon "the practical realities of today's life" that owners "**have a duty to maintain their property in a reasonably safe condition whether the property is open to the public or not**" factors to be considered as to the duty include the use to which the property is put, the frequency of that use by others, the likelihood of injury, the seriousness of the injury and the burden of avoiding the risk. Ultimately, therefore, a landowner is obligated to maintain his property in a reasonably safe condition and an issue to be determined is whether, under the circumstances, the owner either "knew or should have known" that the existing situation was or was not adequate, given its use and design.

In plain language, you as an owner must keep your property in a reasonably safe condition. What is reasonably safe is determined on a case by case basis depending upon the circumstances and what you, as a reasonable owner, either knew or should have known.

Next Month : "Prior Written Notice" and the Protection of Municipalities.

This newsletter does not offer specific legal advice. If legal advice or other expert assistance is required, the services of a competent professional person should be sought. If you have any questions or would like a specific topic covered in the newsletter, please contact J. Michael Hayes, Esq. at 69 Delaware Avenue, Suite 1111, Buffalo, NY 14202, telephone (716) 852-2707 or e-mail jmh@jmichaelhayes.com.
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