



## LIABILITY IN NEGLIGENCE

John Page BA (Law) writes about Insurance. What Insurance?

Secretary At Work: January 1999 *(reviewed June 2011)*

Recently I met a golf club secretary. He had read my article in the magazine about the liability of salaried golf club secretaries. He told me that he had been in touch with his insurance broker and he had been assured that he, a salaried secretary, was completely covered for any disaster, which may occur under the club's insurance policy.

My first reaction was to feel excited that I had actually met someone who had read my articles!! My second was to congratulate him on his good fortune with his insurance company and ask him for a copy of his insurance policy. He very kindly sent me one.

I asked which clause covered him against liability in negligence, so he kindly wrote to the insurance broker and asked him. The insurance company's reply to the secretary's query was that he was covered under Insured includes, where the word employee is mentioned. The reply allegedly indicated that this covered him for all eventualities. I inspected this clause and told the secretary that this clause only covered him for actions brought under health and safety legislation.

I include at the end of the article the two relevant pages of the policy.

The important parts (which are in bold) come under Cover:

- ⌘ **Cross Liabilities,**
- ⌘ **Legal Costs Extension**
- ⌘ **and Insured includes.**

If you look at Cover, you will see that this cover is for sums liable to be paid as compensation - damages for negligence - brought in a civil court.

If you now look at **Cross Liabilities**, you will see that this cover applies, separately to Directors, Officers or members. Remember that the salaried secretary is not an Officer of the club, because officers of the club must be elected by the members at the AGM. The salaried secretary is appointed by a committee and does not come up for election annually. If you now look at **Legal Costs Extension**, you will see that this extension is for cases brought under the Health and Safety legislation. Now look at **Insured includes** and you will see that here the protection is

against actions brought under HASAWA extends to directors, employees etc, so the secretary (salaried) is covered here.

Thus the insurance company was wrong to tell the secretary that he, an employee, was covered in the cases where he was being sued for negligence. I have pointed this out to the secretary. The secretary wrote again to his broker, pointing out my objection to his first reply. He stated that the salaried secretary was not covered under the Cross Liabilities clause, since he was not an officer of the club. The insurance company replied to the club "we can confirm Underwriters have noted the correspondence ... and state that they would consider the secretary to be an officer of the Club. In addition they would be happy to endorse the policy, if required". While I consider this to be a battle won, I do not think the war is won. I am not sure what the acknowledgement means in legal terms. Does the offer of endorsement apply only to this particular secretary's policy or will it apply to all clubs holding this particular policy?

Clubs should be able to recognise whether or not they have this policy from the wording of the clauses.

I hope this article gives you something more concrete to examine in your policies and discuss with your insurance brokers.

Below are the two relevant pages of the insurance policy mentioned above. I do not wish to name the insurance company, because I respect my colleague's wish for anonymity.

## SECTION D – LIABILITIES - COVER

The Underwriters will indemnify the Insured against all sums which the Insured shall become legally liable to pay as compensation in respect of:

- a. death of or Bodily Injury to any Employee caused during the Period of Insurance and arising out of and in the course of employment by the Insured in connection with the Business,
- b. accidental death of or Bodily Injury to any person,
- c. accidental loss of or Damage to Property,
- d. obstruction, trespass, nuisance, loss of amenities or interference with any right of way, air, light or water or other easement.

In respect of any Occurrence covered by this Section the Underwriters will also pay:

- a. all legal costs recoverable by any claimant from the Insured,
- b. all costs and expenses incurred in connection with negotiations, actions or proceedings subject to the Underwriters retaining the absolute conduct and control thereof or which shall have been incurred with the written consent of the Underwriters,
- c. all solicitors fees incurred with the written consent of the Underwriters for representation at:
  - i. any coroner's inquest or fatality enquiry,
  - ii. proceedings in any Court of Summary Jurisdiction arising out of alleged breach of statutory duty.

### Special Provisions - Cross Liabilities

This Certificate applies separately to each of the Insured's Directors or Officers or members in the same manner and to the same extent as if a separate Certificate had been issued to each, provided however that the liability of the Underwriters to all parties shall not exceed the Limit of Indemnity.

### Legal Costs Extension

This Certificate extends to indemnify the Insured (and any other person to whom indemnity may be provided by the Certificate) in respect of legal fees and disbursements including prosecution costs awarded and costs of subsequent appeal against conviction, all incurred with the written consent of the Underwriters and arising out of a prosecution in any Court brought under the Health and Safety at Work etc Act 1974 for an alleged breach of statutory duty as described in Sections 2 to 8 of the said Act which caused or which could have caused any Occurrence, the subject of indemnity under the Certificate.

Provided that;

- a. the prosecution relates to an offence alleged to have been committed during the Period of Insurance and in the course of the Insured's Business,
- b. fines and any costs or expenses arising out of any penalty imposed are excluded.

## DEFINITIONS

The following definitions are applicable to both the Employers, Public and Products Liability Sections where insured.

### **Business includes:**

- a. the provision and management of canteen, social, sports and welfare organisations for the benefit of the Insured's Employees,
- b. the provision of first aid, fire and ambulance services in connection with premises occupied by the Insured,
- c. private work undertaken with the consent of the Insured by employees for any director partner or senior official of the Insured,
- d. the occupation, use and maintenance of premises in connection with the Business.

*Bodily Injury includes death, illness and disease.*

### **Employee means:**

- a. any person employed by the Insured under a contract of service or apprenticeship,
- b. any person supplied to hired by or borrowed by the Insured,
- c. labour masters and persons supplied by them,
- d. persons employed by labour only sub-contractors,
- e. self-employed persons and voluntary helpers.