

Do You Really Understand your Association Insurance and what you are paying for????

Q & A Related to the BSRA ASSOCIATION Insurance Aug 25/09

Ken Colquhoun , Westlake McHugh Insurance is our expert advisor in this article.

Please note: all information is background – for specific situations please call Ken to discuss (519 236 4391)

Q – Do all BLUEWATER associations have the same coverage?

A - No, All associations have liability coverage but some do not carry directors and officers insurance

Q – Do all BLUEWATER associations pay the same?

A – Mainly, yes. Almost all associations have \$2 000 000 per occurrence coverage and their price for liability is \$450 for liability and \$175 for director’s and officers (one association has a \$5 000 000 policy at their request) annually. It does not matter the size of the association or how many members there are.

Q – Do the policies for all Associations come due at the same time?

A- The policies for the individual associations are all due on September 1 annually. The policy is one overall policy with individual coverages for all Associations who choose to take part in the policy

Q - Is there an expected increase for coverage due this Sept/09?

A – The price for director’s and officers went from \$150 to \$175, this is the price referred to above. The liability insurance has not changed.

Q. If one cottage owner within the association fails to pay his/her portion, what happens? Can that individual be sued individually?

A – Nothing changes in this case. The policy covers the entire association.

Q. By paying for the insurance, does this give the cottage owners any ownership rights or authority (designating the road as private) over the insured road? Can we keep drivers from using the road?

A – This insurance covers only what I have refer to below. This insurance has nothing to do with providing authority or keeping drivers from using the road.

Q. If these are municipal roads, why doesn’t the responsibility of insurance liability rest with the municipality?

A – This question is not an insurance question. It is a legal question that I believe the BSRA has pursued and gotten an opinion on in the past.

Q.If one association group just ceased to pay the insurance (and it was a municipal road) , who would be at risk to be sued based on lack of road maintenance and condition?

A – The individual association and owners in the association would be at risk for being sued, the municipality would likely also be brought in (the grounds for suing a municipality are very different from suing an individual

and it would be likely the municipality would be let out). If sued the association would have to defend itself against the suit out of its own pocket.

Q – What are we covered for?

A – The most likely coverage we will be asked to provide is for a lawsuit brought by a third party alleging damage or injury arising out of the negligence of the Association. The policy will defend the association and indemnify should it be determined that the Association was negligent and that negligence caused or contributed to the damage or injury.

Q – Does the policy cover for injury/damages that occur on the private property of the individual members of an Association?

A – No, the policy would respond to injury/damages arising from the commonly owned property of the Association. Also the policy would cover for property which the association does not own but has legally agreed to take responsibility for maintenance or operation of (an example is a road owned by a property owner that the Association has agreed to maintain)

Q-does there have to be a letter of direction on file with the association from that property owner of the road or from the municipality to legally disown liability responsibility?

A – Again, this is a legal question, issues of past practices, implied agreements, payments etc. all come into play. The best thing this policy will provide is coverage and a defence.

The association may be under the impression that they have a clear understanding that a property owner or the municipality has accepted responsibility for the road. The association still could be sued. The costs to defend this suit (even if there was clearly no responsibility on the association) could be in the thousands. Our policy will pay for this defence.

Q – Who is a “Third Party”?

A – A third party is anyone who is not a party to the contract (in this case the insurance policy), this means someone not part of an association or the insurer

Q – What is “Negligence”?

A – Negligence is the doing, or omission to do, something that a reasonable person would or would not have done. It is an extremely broad term.

Q - Is the BSRA (and Bluewater) the only location which requires this type of coverage?

A – No, in almost all parts of Ontario there are unassumed roads where groups of owners are responsible for this type of insurance.

Q – Has any Association on this policy had a claim?

A – No, ING/Intact Insurance has had no claims on this policy, it has been in force with them for 6 years.

Specific Cases

Q – Will an individual owner be responsible for injury/damage which occurs in front of their property on the Association property?

A – The individual property owner will not ultimately be responsible for this. The Association policy will respond in this case. The individual property owner could be named in a lawsuit but would be removed from any lawsuit quickly as long as the injury/damage occurred on the commonly owned/Association responsible property.

Q – A driver hits a pothole and damages their vehicle on a commonly owned road. What happens?.

A – Assuming the driver is a third party (see definition above) the policy will defend against any allegation of negligence causing the damage and will pay should the damage be caused by the negligence of the Association (see definition above).

Q – A driver swerves to miss a pothole and hits a bike rider causing injury (on the commonly owned road). What happens?

A – This is the same situation as above. The injured person would likely launch a suit against the driver of the car. The insurance company for the car owner could allege that the driver had to avoid the pothole that the Association was negligent for allowing to be there. The policy would defend the association and indemnify should the Association be found to be negligent causing or contributing to the injury.

Q – Someone is visiting a cottage owner and on their way to the beach a loose railing along side the community stairs gives way and they fall and break their leg. What happens?

A – It is very important to note that this situation occurs on the commonly owned stairway. The policy would defend and indemnify the Association against a lawsuit brought against the association alleging that the negligence caused or contributed to the injury. If this occurred on a privately owned stairwell or steps the individual owner would need to have their insurance involved.

General Issues:

Q – Since we have not had any claims what is the most likely cause of a claim?

A – There are three areas where claims are very likely to arise. The first is on the Association stair/steps to the beach. Any injury that occurs here can result in a lawsuit against the Association alleging improper design, construction or maintenance. The policy will defend and indemnify these claims.

The second is the Association roads, injury or property damage could result in a suit in any number of ways through allegations against the Association for the improper design, construction or maintenance of the roads. The third is on the commonly owned playgrounds/field for the same situations. The policy would respond and defend/indemnify the Association for any injury/damage that is alleged to be caused by the negligence of the association.

Q – The word lawsuit is always mentioned, does there have to be a lawsuit for the policy to respond?

A – No, issues should be brought to Westlake McHugh's attention immediately. Issues can be resolved by the insurer prior to a full blown lawsuit but the important point to note is that the insurer handles all matters as though litigation will follow.

Q – Is there any other cover under the policy?

A – There is a portion of the policy where medical payments can be made (\$5000 limit for any individual with a total limit of \$25000 for any one incident) on a voluntary basis, meaning without the acceptance of liability.

Under no circumstances should the Association or any member accept responsibility or liability but this cover can be triggered with agreement between the insurer and the Association.

Directors and Officers Insurance

Q – What is Directors and Officers Insurance?

A – This is an insurance that almost all the associations have. Directors & Officers Liability provides financial protection for the directors and officers of the Association in the event they are sued in conjunction with the performance of their duties as they relate to the Association.

Q – Why have it?

A – The policy is something that anyone who accepts the responsibility of being on the board should have. Their personal insurance will not cover them for lawsuits arising out of their actions as a director. Directors and officers can be held personally responsible for acts of the Association and this policy will cover them for lawsuits made against them in conjunction with their duties.

Q – We don't have director's or officers on our board

A- In our policy the Association and Individual board members (presidents, secretaries, treasurers etc.) are covered.

General

Q – Does this policy provide enough coverage

A – In the insurance business we always recommend more coverage as I'm sure everyone is used to

We can increase the limit for Liability and Directors and officers for \$100 per million

Increase in coverage (they both have to go up together)

Ie. To go to \$3 Million for liability would cost \$550 and Directors and Officers would be \$275

Further increases would follow the same.

The BSRA does not endorse any individual insurance company or provider. We sought out Ken Colquhoun as our "expert advisor" for this article and we would like to thank Ken for his candid and extensive knowledge. (Lynn Lindsay..BSRA)

This information was compiled and discussed with Ken Colquhoun, Managing Partner, Westlake McHugh Insurance
If there are any further questions Ken would be happy to answer them.

Phone number is 519 236 4391 **