

Fringe Benefits

Does Your Coverage Have Loose Ends?

by David Berliner

Those who understand a commercial insurance policy are familiar with the “package” portion of this type of coverage. The package refers to the core group of coverage on any policy, which includes general liability, property, auto, etc. There is no question that this coverage is paramount and that it provides the bulk of the premiums you pay. This article, however, will address some of the “fringe” coverages associated with such policies, using a golf course/country club to illustrate the fundamentals of fringe benefits.

Don’t let the word “fringe” fool you. This term is used simply because these coverages are not part of a commercial insurance package. However, these exposures demand your attention and coverage is vital if your goal is to take a holistic approach to risk management. Following are several situations that may not produce a high frequency of claims throughout the policy period, but, if neglected, the severity of any one claim can contribute to a club’s financial downfall.

Directors and Officers Liability (D&O)

D&O liability generally covers insureds for claims made by third parties for losses allegedly caused by management’s acts, errors or omissions, misstatements and/or misleading statements.¹ This coverage is generally geared toward private clubs, as these types of facilities typically have a Board of Directors or numerous committees in place to assist in the club’s decision-making processes. Claims arising in this area usually involve gender-equity complaints, employment discrimination or discrimination in the selection of prospective members. Although these may not be high-frequency claims, they can certainly generate high-dollar settlements.

A private club in the Southwest is currently under an investigation regarding gender equity complaints filed by 2 female members who claim they were denied access to the men’s grill at the club. Also at issue are restricted tee times on weekends, which are available to “primary” members, only a small number of whom are female. The state’s attorney

general must weigh whether the *de facto* practice of having only a handful of women eligible to play those hours equals overt *de jure* discrimination.² Time will tell if these complaints are justified.

It should also be noted that members of private clubs volunteer their time to serve on boards and committees. When a claim is filed, not only is the club’s reputation in jeopardy, but, if named in a lawsuit, the personal net worth of individual board members could also be threatened. Members who volunteer their time to serve on a board are not doing so with the expectation that their reputations and credit could possibly be disparaged. This example demonstrates why it is imperative that a private club has a D&O policy in place. Although an appropriate coverage limit will vary from club to club, a minimum of \$1 million is wise and may be increased as a club sees fit.

Employment Practices Liability (EPL)

Quite often, EPL coverage is included within the same policy form as D&O. Sometimes it shares the D&O limit, while other coverage forms provide a separate limit. Either way, it is an important coverage for public and private facilities alike. EPL addresses claims involving, but not limited to, sexual harassment, discrimination and wrongful termination. If you have employees, you have a potential exposure. Situations involving the proverbial “disgruntled employee” are all too common and can happen anywhere from front-line employees to back-office staff. Whether an employee’s argument for being fired or harassed on the job is legitimate or not, don’t take the chance of going without this important liability coverage. Historically, the food and beverage department and outside services staff are fertile grounds for claims to grow. Because these individuals serve the members/customers and interact with them on a regular basis, the service staff is open to heightened scrutiny. Much like D&O, a sufficient limit should start at \$1 million and increase as necessary.

*photo courtesy of SilverStone Group client,
Ballyhack Golf Club – Roanoke, VA*



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Pollution Liability

Commonly referred to in some policy forms as “Herbicide/Pesticide Applicator Liability” or “Limited Above Ground Pollution” coverage, pollution liability presents a significant exposure to the course/club. Common claims relate to contamination of ground water, chemical spills and chemical run-off. Typically, the superintendent/groundskeeper and staff apply chemicals to the playing surface (and elsewhere on the property) on a weekly basis. Proper application, storage and disposal of the chemicals are consequential to the underwriting process when preparing a policy. While every golf course may experience this exposure, courses with prominent water features must pay particular attention. Courses with creeks, rivers, wetlands or other sensitive environmental areas increase their risk due to run-off exposure. Coverage for fuel tanks (for the operation of golf carts or maintenance equipment) is also found here.

Management can take simple steps to assist in the prevention of a claim. Posting a sign or otherwise notifying players prior to their round that chemicals have been applied to the course is essential. This explains why superintendents use “tracker dye” (or blue foam) after applying pesticides to the greens. It not only helps the staff be more efficient in the application, but it alerts players as well.

Drainage of these chemicals at your facility should be discussed, especially regarding areas around the clubhouse or maintenance facility. A recent claim involved a club that had insufficient drainage in an area where golf carts were hosed off after the completion of a round. This particular course is adjacent to a farm. Course pesticides had been picked up by the cart tires and from grass clippings that had adhered to the undercarriage. When the carts were washed down, the chemicals ran-off to the farm and destroyed a portion of crops. A six-figure claim ensued. Crazy, you say? It happened, and it helps to illustrate the significance of pollution liability, regardless of your club’s location.

Personal property of members/guests in your care, custody or control and property of others

Included in your property coverage should be a limit for members’ and guests’ personal property (i.e., golf clubs or member-owned golf carts). The majority of insurance policies have limits ranging anywhere from \$5,000 to \$50,000 annually. Do you store members’ clubs? Do you have a bag-drop? Have you ever hosted an outside event or tournament? Considering



*photo courtesy of client,
The Prairie Club – Valentine, NE*

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the cost of golf equipment these days (\$500 driver, anyone?), it wouldn’t be uncommon to project that there is at least \$1,000 of value in any one player’s bag. That’s a hefty sum when you consider the number of clubs stored in your bag room. Envision the group of 8 who traveled from out-of-state and left their clubs at your curbside bag-drop; or, better yet, the 150 sets of clubs sitting unattended outside the clubhouse prior to a charity event. A recurring claim involves theft of clubs by non-golfers. At many facilities, it is quite easy for thieves to drive right up to your clubhouse, spot one or multiple bags, toss them in their vehicle and away they go. This may not occur frequently, but a five-figure claim could await you if any of the scenarios mentioned above occur at your facility. You should check your current limit, as \$5,000 probably isn’t enough and an increase (when available by your carrier) to \$25,000 or \$50,000 is very affordable.

There are several other fringe coverages worth mentioning, including Debris Removal, Pollutant Clean-up, Crime and Underground Property (irrigation system). Many of these are overlooked unless you’ve been unfortunate enough to suffer a claim in this area (in which case you probably have begun to pay a little extra attention to your limits). Regardless, it’s wise to familiarize yourself with the entire policy and talk to your current agent on an annual basis, if you’re not doing so already. Ask questions, present claims scenarios to your agent and discuss various options regarding limits. Your coverage is an ever-evolving process. If you understand where and when your coverage applies, in addition to knowing its limits, you’re more appropriately prepared to deal with a claim. Don’t let the failure to include fringe coverage become a gaping hole in your policy.

¹ “Why Would a Private Company Need D&O Insurance?”- Advisen.com, 11/2/2009

² “Gender Equity Complaints Focus on Tucson CC Grill”- *Golfweek*, 2/19/2010