

Backfire from the golf boom — Lawsuits

Today's final settlements awarded in liability cases are caught up in the inflationary trend.

In the second of this two-part article, the author tells how a country club should insure itself against hefty lawsuits

By JOHN F. GLEASON JR.

What should a country club do to protect itself against liability claims and lawsuits resulting from the types of accidents and injuries such as those described last month in GOLFDOM?

Basically, a country club must protect itself by purchasing adequate insurance to indemnify it against lawsuits by the public and against claims by injured employees. This protection is covered by types of insurance contracts.

1) Comprehensive general liability insurance—to protect a country club against lawsuits filed by members, guests or members of the public who allege bodily injury or property damage claims arising from negligence occurring on or from the club premises or arising out of the country club's operations.

2) Comprehensive automobile liability insurance—to protect the country club against suits filed for negligent operation of automobiles owned, used, hired or driven by others on behalf of the country club. A country club should insist that its comprehensive automobile liability

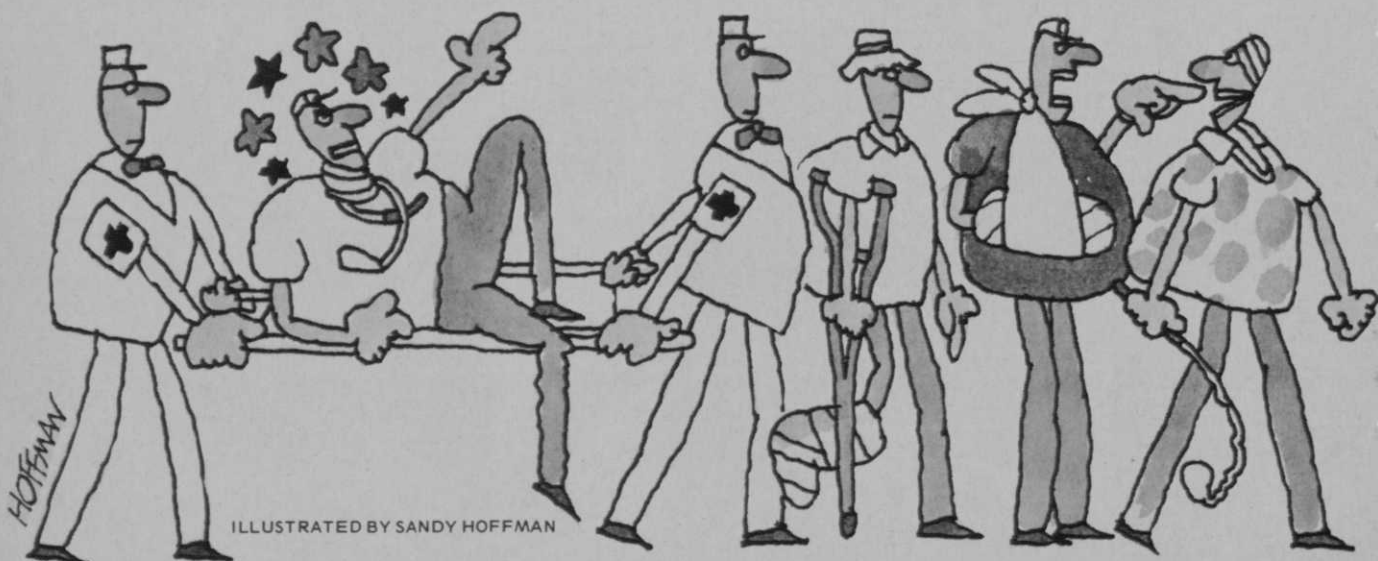
insurance be incorporated into the same contract.

3) Workmen's compensation and employers' liability insurance—to protect a country club for all employee compensation claims and other benefits required by statute to employees injured by accident or disease. This standard contract not only covers statutory benefits accorded employees, but provides liability insurance in those states where employees are allowed to waive statutory benefits and instead sue an employer at common law.

4) Catastrophe umbrella liability insurance—to provide an excess second layer of indemnification in case a large judgment is rendered by the courts against a country club which exhausts the limits of liability provided by one of the other basic policies previously mentioned.

Comprehensive general liability

This insurance protects the country club against bodily injury and property damage claims and suits which may oc-



cur on the premises, while using its facilities and for injuries or sickness resulting from serving food and beverages.

The comprehensive general liability policy is the broadest basic liability contract available to a country club. It not only indemnifies the country club against suits resulting from its present operations, but will automatically cover any new areas which may develop during the policy term—provided the new area is not excluded by the policy provisions.

Attached to this contract is the "clubs endorsement," which modifies the policy to the particular exposures of the average country club. This endorsement broadens coverage in many respects, but also restricts coverage in other areas.

There are certain exclusions in the basic contract and in the clubs endorsement which must be modified or supplemented by other insurance. Without modification, many normal areas of a country club's operation would be unprotected.

There are three exclusions

which must be modified before a country club can feel reasonably secure that its liability insurance will cover claims which may arise in the normal course of its operations. These exclusions must be removed from the contract or supplemented by other insurance. They are: 1) the contractual liability exclusion; 2) the alcoholic beverage exclusion, and 3) the exclusion pertaining to property of others in the care, custody or control of the country club.

The contractual liability exclusion states that the policy does not apply to any liability assumed by the insured under any kind of written agreement or contract.

Frequently, a country club signs various service contracts with outsiders to provide maintenance services, parking service, golf car maintenance, swimming pool maintenance, or a host of other services. Embodied in the written agreement with many of these service organizations are "hold harmless" clauses.

Under these

clauses, the country club agrees to free the service company from any bodily injury or property damage claims which may arise from its operations performed on behalf of the country club.

The basic liability contracts deny protection to a country club for this form of contractual obligation, unless the insurance company has had an opportunity to review the impact of the obligation and has agreed to extend the scope of coverage to include the hold-harmless obligation within the policy by an endorsement.

Sometimes an insurance company will afford what is known as "blanket contractual" liability coverage in which it agrees to protect the insured for any obligation assumed under written contract.

Blanket contractual liability coverage is best for a country club because of the number of contracts which are signed by its officers or manager which may not find their way into the hands of the insurance underwriters for proper handling.



LAWSUITS

continued

Many insurance carriers, however, are reluctant to extend blanket protection to a country club, contending that they reserve the right to review the contractual obligations which it will underwrite.

If your country club does not have blanket contractual liability protection, it is imperative that *every* contract or service agreement which the club signs be reviewed by the club's attorney and the liability insurance carrier before that agreement or contract is signed.

The second exclusion in the basic liability policies which every country club must know about excludes coverage for any claim or suit resulting from the selling or serving of alcoholic beverages.

This broad exclusion not only includes selling or serving alcoholic beverages in violation of a statute, ordinance or regulation, but further denies protection for a suit in which a country club might be named as a co-defendant following the selling or serving of alcohol to a minor or a person under the influence of alcohol or which causes or contributes to the intoxication of any person.

Nearly every country club serves alcoholic beverages to members or guests. Should a person, after being served a drink on the premises, cause an automobile accident in which others were injured or killed, the country club might be named a defendant in a subsequent lawsuit.

Unless the club has had the alcoholic beverage exclusion removed from its comprehensive general liability policy beforehand, or has purchased a separate liquor liability policy, the basic policy would avoid defense of any claim as well as payment of any judgment that was ren-

dered against the club.

The third troublesome exclusion in the basic policy, which every country club must consider, reads as follows:

"This insurance does not apply to property in the care, custody or control of the insured or as to which the insured is for any purpose exercising physical control."

Nearly every country club has facilities for the safekeeping of property of members, employees and guests, which if damaged, destroyed or stolen, would fall within the interpretation of this exclusion.

Members' golf clubs are usually stored in the pro shop during golf season and in lockers during the winter months. Per-



sonal effects are also kept in lockers, fur coats are checked in the clubhouse coatroom and private cars are parked by the club doorman on the club premises.

These are a few examples of the types of personal property for which the country club legally assumes responsibility. If an automobile were stolen, a checked fur coat missing or other property destroyed by fire, the country club would be held responsible.

Most liability insurance companies will not remove the care, custody or control exclusion from the basic policy. A country club, therefore, must determine the maximum value of other's property for which it assumes

safekeeping and purchase legal liability insurance to adequately protect itself.

Frequently, automobiles may be insured under the comprehensive automobile section by attaching the garagekeepers' legal liability form. Moreover, an "all risk" legal liability policy would protect the country club for loss or damage of other property in its care.

However, all legal liability policies usually exclude employee dishonesty losses; therefore, a fidelity bond on all employees is also required.

Guard against by-laws which hold the member responsible for property entrusted to the country club. These disclaimers do not hold up in court. If a personal automobile was taken from the club premises, for example, the member's automobile insurance carrier would have a legal right to look to the club for reimbursement of the amount of settlement paid the member.

Thus, every country club must protect itself by legal liability insurance for the property of others for which it accords safekeeping.

As stated earlier, the comprehensive general liability policy when written for a country club should have the clubs endorsement attached. If an underwriter has failed to attach this form, the club should insist that it be attached. This endorsement broadens the scope of protection to the particular operations of a club in many ways.

It extends coverage to any member—rather than just officers—while performing activities on behalf of the country club, except practicing for or participating in any game or sport. This would be within the scope of the member's personal comprehensive liability coverage, found in his home-owner's policy or in a separate policy.

The clubs endorsement rede-

continued on page 82

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continued from page 60

finest product coverage for the country club so it is protected against suits arising from foods or beverages which cause illness or injury to members or guests served on the club premises. This endorsement permits protection on watercraft when declared and when used by members or guests only.

The clubs endorsement protects the club premises, clubhouse and other buildings, golf cars, gyms, saddle animals, skeet and trap shooting ranges, the swimming pool or bathing beaches, ski lifts and toboggan slides, provided their use is for the membership and guests only. If these facilities are used by the public commercially, coverage is denied.

Aircraft owned by or rented to the club must be insured under a separate aviation liability policy.

If a country club provides health facilities such as masseurs or physiotherapy, the clubs endorsement must be modified to include these exposures. Providing beauty facilities for lady members or a barber shop for men would also have to be declared.

If a country club permits various teams to represent the club in club events away from its premises, the endorsement must be modified. If a member representing the club should injure another contestant or a spectator at this event and the country club were named a co-defendant, the club would be unprotected unless this modification were made in the policy.

Finally, many country clubs enter into "joint ventures" with other clubs or organizations. The basic policy excludes all joint ventures, but usually this provision may be modified to protect the club when the joint

continued on page 84



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LAWSUITS

continued from page 82

venture is of a golfing or social nature usual to club activities.

Workmen's compensation and employers' liability

Every liability policy excludes claims by employees. This protection is within the domain of the standard workmen's compensation and employers' liability policy or by state industrial compensation funds.

Hence, every country club must carry compensation insurance or contribute to the state fund according to law. And every employee should be included under workmen's compensation protection.

Many country clubs fail to include caddies and other temporary summer employees within this coverage, although nearly every state requires that summer employees be insured. Most states define the legal age for youthful employment, insist upon work permits and impose severe penalties on any employer who hires caddies not covered by compensation or who are under the legal age.

Other states define certain forms of employment restrictions for youngsters. It is a violation in many states for teenagers to work in the kitchen as busboys where sharp instruments are used or to cut greens or fairways.

Catastrophe umbrella liability

No country club in this age of high court awards can afford not to give high limits of liability, at least for bodily injury claims, serious consideration. Any country club which does not carry at least \$1 million bodily injury protection per person under its basic premises liability policy and its automobile liability policy is courting danger. No one can advise a country club as to

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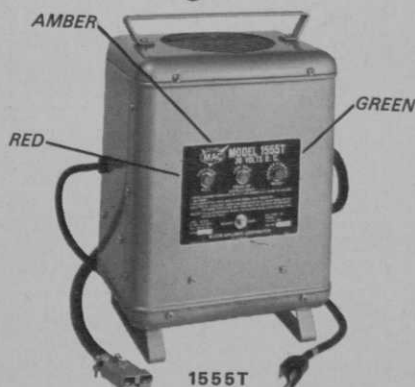
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the actual amount of protection required because lawsuits involving many injured persons could reach staggering figures in a final settlement. Therefore, every country club should also carry a catastrophe umbrella liability policy at very high limits over and above its basic premises and automobile liability policy and its workmen's compensation coverage.

This umbrella policy provides a second layer of protection should the basic policy limits be exhausted by judgments or defense. Furthermore, when purchasing an umbrella policy, unless the exclusion in the underlying basic policies are modified, the umbrella policy will not tract with the broader protection.

Many country clubs will want to have their employees protected as additional insurance, so that their personal interest in a lawsuit would be included. Other clubs recognize the exposure to a false arrest suit or a defamation of character suit. Personal injury liability protection, as it is termed, may be endorsed onto the club's comprehensive general liability policy.

If a caddiemaster or another employee administered first aid to an injured player or caddie, for example, and compounded the injuries, this could be protected adding an incidental malpractice endorsement onto the club's liability policy.

However, whether or not a country club attempts to broaden its protection, nothing is as important as carrying high liability limits, particularly against bodily injury claims. □

Mr. Gleason is an insurance consultant to country clubs. He does not sell insurance, but reviews and advises on the protection afforded by their insurance policies.



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