

Are We Protected?

I came to realize in the very early years of my training that Taekwon Do offers so many enjoyable aspects of training (ie) Patterns, Sparring, Step Sparring, Self Defence, Theory and Breaking. Not to mention the friendships built within your Club, Organisation and fellow practitioners throughout the world. This offered a variety to the training sessions and it meant that if you weren't so hot in one area of the art there were many other areas that you could excel in.

For some of us the main reason why we would partake of any martial art is to know that that at the end of the day we can protect ourselves adequately from any attack. It is one thing to know that as an individual we have the power or resources available to ensure that we have the knowledge or skill to avert a physical attack. Yet would we be ready as an Organisation to fend off a liability attack from the Public?

To my knowledge, we as an Organisation have been fortunate enough not to have been involved in any liability claims lodged against us. You may ask what do I mean by this? Basically, there is a potential for anyone to hold our Organisation liable as long as they can prove that we have been negligent.

All of us owe a legal duty to our neighbour not to cause loss or damage to their property or person. If we breach this duty then the law of the land makes us liable to pay for the loss or damage caused and the consequential losses that flow from this

Main type of legal liability:

Negligence - This is when someone does something a reasonable person would not or fails to do something a reasonable person would do. The one suffering the loss/injury has the responsibility to establish that negligence applies if they want to succeed in their claim.

How would this apply to us?

Throughout the regions it is not uncommon for us to have TKD Demonstration's, whether this be a Regional or Club Demonstration Team. If we do not take all reasonable steps to protect someone else's property then we as an Organisation could be held liable. When demonstrating a technical break at a demonstration (ie) flying reverse turning kick and a piece of the board damage's the car window or windscreen. It is possible for the property owner to seek recovery or compensation for their full repair/replacement cost directly from us, as long as they can prove that we were negligent for the loss. If we had failed to consider that the trajectory of the board could damage someone else's property or placed an adequate "TKD Human Shield" up, then we may not have a leg to stand on.

We would apply the rule of did we take all reasonable precautions to ensure that another person's property was safe knowing full well our actions could potentially cause damage. The exact same rule can also be used on a different scenario. This probably would apply to all our clubs as it is unlikely that a club would own the premises they train in.

Whether an ITFNZ club leases or pays hireage fee's for their training premises, there undoubtedly would be rules and regulations that the Hirer must adhere to. Regardless of where the premises is situated (ie) school premises or gym you can be certain that the building would be insured with the Owners Insurer's. If it is not insured then that is blind recklessness on the owners behalf. One of a Property Owners major fear's is that the property will suffer fire or water damage. These are two perils which could render the premises inoperable for any length of time for any number of reasons ranging from unavailability of contractors to complete or quote a job or not being able to access the property. Not only does the Owner have to deal with arranging the repairs but there are also consequential losses that could arise, such as the loss of use or the premises which means the loss of rental fee's which would have normally collected had the premises been operable.

How does this effect the Organisation? Lets say we (ITFNZ Club) had used the heaters during the course of the training and one of our students had placed an item of clothing over the heating vent. As a result the clothing caught fire which resulted in the property being partially damaged or at worse case scenario totally burnt down. Although, the property would be insured and the repairs/replacement initiated by the Insurer's, be sure that they would seek recovery of an identifiable party - ITFNZ, as long as they can prove that we were negligent in our actions which caused the fire. We would be expected to pay for any repair/replacement costs as well as any loss of use costs for the hire of the premises. The same outcome may arise using a different scenario (ie) the tap was left on in one of the restrooms and the premises was flooded.

If a claim was brought against ITFNZ and we believed we weren't liable for the loss, there is cover under a Public Liability Policy which provides legal cover for reasonable legal fee's to defend our case. Obviously the Insurer would normally "run" the claim, but in some cases they will consider letting us have our own Solicitors handle the matter as long as they regularly report back to the Insurer's.

Types of Liability Policies available to us.

We should be looking at either a Public Liability Policy or a Broadform Liability Policy and we will compare them both, by looking at the covers provided for property and bodily injury.

| Broadform | Public Liability |
|---|--|
| Liability Insured Liability connected with the business described in the schedule from any one source or original cause | Liability Insured Same as Broadform. |
| Property damage includes physical damage to any tangible (perceivable by touch) property and its subsequent loss of use. | Same as Broadform |
| Property damage includes loss of use of tangible property that has not suffered physical loss or damage. | Not covered |
| Bodily injury includes accidental death and bodily injury that includes sickness, disease, disability, shock, fright, mental anguish or mental injury. | Same as Broadform |
| Bodily injury includes false arrest, false imprisonment, malicious prosecution or malicious humiliation. | Not covered |
| Bodily injury includes defamation (i.e. libel or slander) or any publication that violates an individuals rights to privacy but not - <ol style="list-style-type: none"> 1. Where the insured knows the statement is false 2. Involving advertising, broadcasting, or telecasting activities by the insured or any acting for them. | Not covered |
| Bodily injury includes wrongful entry or eviction or any other invasion of right of private occupancy. | Not covered |
| Bodily injury includes battery or assault when it is committed to prevent or eliminate danger to property or person(s). | Not covered |
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Statutory Liability is another type of cover available under a Broadform Liability Policy

Should ITFNZ receive an official complaint or a notice of intended prosecution that may lead to a prosecution resulting from a breach or potential breach of an Insured Act not excluded under the Policy, then the Policy would respond.

As long as the complaint is in connection with the business with ITFNZ and is an accidental event (ie) not deliberately or knowingly committed.

What costs does the Policy cover?

Fines

Prosecution defence costs

Prosecution defence costs where acquitted of a charge.

Statutory damages awarded against ITFNZ for a breach of the Privacy Act 1993 or Human Rights Act 1993. This strictly is a civil action that leads to an award of damages, not a criminal prosecution that leads to a fine.

Statutory defence costs for defending a case for damages brought about as a result of a breach of the Privacy Act 1993 or Human Rights Act 1993.

Official investigation costs.

How a Liability Policy can Operate.

Policy Operation

The Liability Policy covers the Insured (the entity named in the schedule ie. ITFNZ inc) LEGAL LIABILITY for property damage or bodily injury caused to others that :

1. Is incurred during the period of the policy
2. Arises out of the insured business AS DEFINED in the policy.

Legal liabilities are covered not moral ones.

The law of the land in which the accident occurs determines if a legal liability exists.

Sometimes the insured may cause damage to other's property without there being a legal liability to pay. The insured may feel morally responsible to pay for the damage either because they feel sorry for the other party who was not at fault or because they want to retain the person's goodwill.

The policy does not cover these costs.

The damage or injury must happen in the period of the policy.

If the negligent act occurred in the period of the policy but the damage occurred after the policy was cancelled or not renewed then the liability is not covered.

Canceling liability policies - care needed

The insured may cease business and cancel the policy in the belief that cover is no longer needed. This is not recommended.

The reason is that although the act giving rise to a cause of action may occur during the period of the policy, the damage may occur after the cancellation date. As the policy only covers damage happening during the period of cover, the former insured will be left without cover.

In the above circumstances, the insured ought to be advised to continue the liability insurance until such a time that there is no risk of a future claim arising.

How long should the policy be kept in force?

The cause of action starts from the time damage occurs, or if unseen, was reasonably discoverable.

Bearing in mind that this policy is designed for any business or trade, normally a claimant has six years from this time in which to commence proceedings. With this in mind, the policy should continue in force for a minimum period of 7 years. This period would need to be longer if the business is such that latent damage is likely. However,

The ultimate decision is the customers.

The liability must arise from the defined business and this must be described accurately in the schedule.

Policy Definitions

| | |
|-------------------|--|
| Accident | An event or omission that is unexpected and unintended from your point of View |
| Bodily injury | Any of the following: The accidental death of, or the accidental bodily injury to any person, including sickness, disease, disability, shock, fright, mental anguish or mental injury; |
| Business | The business described in the schedule. |
| Claims Event | A loss or series of losses arising from one source or original cause. |
| Excess | This is the amount of any claim that you must pay |
| Property damage | Accidental physical loss or accidental physical damage to any tangible property, including its subsequent loss of use; |
| Insured / You | Any person or entity named in the schedule as "INSURED" including the following as long as they are living and based in New Zealand. Any subsidiary company, or joint venture, or any company over which active management is exercised; and Any director, executive officer, employee or partner of (i) the person or entity named in the schedule, or (ii) any entity referred to in the first noted * above but ONLY while acting in that capacity |
| Geographic Limits | Cover is New Zealand and other countries may be specified in the schedule. This means that cover includes liability of the Insured on overseas business trips that arise from business activities. |

These are some definitions, which have been used from the NZI Liability Policy Wordings. Bear in mind that depending on which insurance company you decide to place your business with these wordings may differ.

Making a Claim

It is important than when making an insurance claim that we make no admission of liability to any party and that your Insurance Company or Insurance Broker is notified as soon as possible. We are not to enter into any negotiations for settlement with any third party as this would seriously prejudice our claim and potentially mean that the claim could be declined for this reason alone.

On notification of a claim it generally would mean that the Insurer's would require the following :

A completed Claim Form from us detailing what had occurred, when and details of the loss

If necessary any written statements from us concerning the claimed event.

Any contracts that exist (ie) Lease agreement of a premises for which we hire for Tae kwon Do classes. Remembering that and contractual liability is excluded under the policy.

Photo's or any physical evidence of the damage incurred.

The attached Claim Form is an example of what a standard claim form would look like and the type of questions that could be asked of us.

Broker or Direct?

In New Zealand the Insurance Industry is very competitive whether this be in the Direct Personal Line or the Broker Channels. The main differences between Direct and Broker are the following-

Direct

You approach the individual insurance companies and arrange the insurances and collect the premium quotes yourself.

When placing business or initiating a claim you could deal with many individuals and you are not always guaranteed a "one person" ownership for your claim or business.

The premium you pay has no additional built in fee for the services of a Broker.

Examples of New Zealand Direct Insurance Companies :

| Name | Contact Number |
|-------------------------|----------------|
| State Insurance Limited | 0800 80 24 24 |
| NZI | 0800 800 800 |
| AMI | 0800 100 200 |
| Tower | 0800 808 808 |
| Vero | 09 306 0350 |

Broker

A Broker works solely for you and is responsible for collating the best deal for you. This saves you from contacting all the individual Insurance companies.

If there is any need to discuss various policies or initiate a claim then your Broker will be the go between and arrange to get you the claim form and all the necessary information prior to a claim being lodged.

You deal only with your Broker and there is no need to contact the Insurance company.

There is a built in fee for a Brokers services in the premium they quote.

Examples of New Zealand Brokerage Houses :

| Name | Contact Number |
|------------------|----------------|
| AON | 09 362 9000 |
| Crombie Lockwood | 09 307 2082 |
| Marsh | 09 379 6640 |

How Much Will This Cost ITFNZ?

Generally if you were to contact any Brokering house they would probably quote the minimum Liability and Statutory premium which would be your basic \$250 - \$300 per annum. This was very evident on the quotes that Mr Lowe had distributed earlier on this year (ie)

Vero Insurance (NZ)Ltd

Less than 20 clubs – annual premium of \$298.12 including GST

20-30 \$270.00

31-40 \$241.87

41-50 \$213.75

51-60 \$185.62

Sum insured \$1,000,000

Excess \$250

Personal injury excluded from the policy.

NZI

Premiums were more expensive and they are now excluding personal injury from the cover for sports clubs.

AON

Premium \$337.50 including GST for one club

Sum insured is \$1,000,000

Excess \$250

What we have to be very mindful of here is that these quotes would be for ONE club only. I have made enquiries with AON and Crombie Lockwood and they are at present promoting the Association Liability Policy of which a Brochure is also attached for your reference. However, premium for this type of policy can range anywhere between \$1000-\$1500 per annum.

My Recommendation?

ITFNZ has been operating all these years without any type of Liability Insurance and/or property insurance. We have been very fortunate to date that we have not had any disasters which could render what we have built down to nothing, by paying substantial costs for damage that we were legally liable for.

Have we even considered whether there is any cover in place for the many do boks, encyclopedia's, syllabus books, badges, CD roms which our Sales part of our organisation is in charge of? What about the ring size mats that are scattered throughout the country? Even though they belong to the respective clubs or Regions, they are still affiliated to our Organisation and therefore cover would exist for this tangible property. Obviously cover would not exist for damage caused whilst the property was in use *but* an accidental fire could quite easily cripple us financially for some time not to mention the inconvenience of it all.

I would strongly recommend that we take out some form of Liability Insurance, preferably Broadform as the scope of cover offered under this type of Policy is wider than that of a standard Liability Policy.

Lena Walton
III Dan
Berhampore Co Instructor
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