

Rural property news: summer- Public liability insurance - ensure you're covered!

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Insurance is unlikely to be the number one topic of conversation when you discuss your business affairs. But a recent case highlighted the need to keep under regular review the nature of insurance cover and, in particular, the level of cover.

Do you know the level of indemnity on your public liability and employer's liability policy of insurance? When did you last review it? Does your broker discuss this with you at annual renewal?

We recently assisted a client in resolving a very serious injury case where the limit of indemnity on the public liability policy was £5m. A visitor to the farm was rendered a paraplegic as a result of an incident that could be regarded as a freak accident. A large bale of straw fell onto the claimant and the personal injury claim was advanced at a figure close to £9m.

In a situation such as this, insurers generally have a provision in the contract of insurance which, in simple terms, states that they can hand over a sum equal to the limit of indemnity – in this case £5m – to the policyholder and leave the policyholder to continue to deal with the claim.

Why is this a problem?

The policyholder is then in a situation of having to appoint their own solicitor to act, as the insurance company's nominated solicitor is unlikely to be able to act due to a conflict of interest.

What about legal fees?

The policy of insurance normally provides for the limit of indemnity to be paid plus costs. Once the insurers have handed over, in this case, the £5m, they are entitled by virtue of the contract of insurance, to limit their cost liability to the costs incurred up to that date. In this situation, the policyholder not only has to fund their own ongoing legal costs but also the costs of the claimant (if the claimant is successful).

What can be done if this situation arises?

Ideally the policyholder should appoint their own solicitor to work with the insurance company's solicitors to attempt to negotiate a settlement. This may involve the policyholder making a payment over and above the limit of indemnity but it generally means that the insurers will be responsible for all of the claimant's costs. It is a very complicated situation which can involve obtaining detailed reports on the financial means of the policyholder, particularly if there is a financial limit on what can be offered by way of settlement over and above the limit of indemnity. If the claim is very large and the financial means of the policyholder are insufficient to meet the loss then bankruptcy proceedings can follow. In the worst case scenario this could then lead to the loss of the family home.

The moral of the story

Damages for personal injury claims have increased very significantly in recent years. It is important to (i) review with your insurance broker the risk profile of your business (ii) look at the definitions within the policy of insurance carefully and (iii) establish how the limit of indemnity is calculated, for example what if one or more individual is seriously injured, is there a £5m limit per injured party? Generally there is not – the limit applies to an 'event' only.

It is also important to look at the definition of an employee for the purposes of an employer's liability policy and to consider whether some casual labour will fall under the definition of an employee. Generally the limits of indemnity under an employer's liability policy are higher.

In the scheme of things, the additional costs of a higher level of indemnity is a fraction of the potential liability in the event that a claim is advanced and the limits of liability are inadequate.

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