

OAMPS Sports Risk Management Newsletter

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Tragic Accident Leads to Sports Club Fine

In June 2009, 19 year old gymnast Michelle Maitland tragically died when she fell from a tumbling trampoline and hit her head on the concrete floor. In February 2010, the Townsville Gymnastics Association was charged with a breach of section 24 of the *Workplace Health and Safety Act 1995*.

It was alleged that the organisation's workers or other persons were not free from risk to their health and safety arising out of its business or undertaking. The identified risk was the risk of injury, including the risk of death. The hazard, or source of risk, was the concrete flooring and/or the failure to provide adequate protective covering to the landing area for gymnastic apparatus, namely a tumble tramp/tumble track.

The outcome was a \$70,000 fine to Townsville Gymnastics Association. The Industrial Court of Queensland dismissed Townsville Gymnastics Association's appeal against the penalty in its judgment handed down on 22 March 2011.

Sport and recreation activities by their nature provide physical risk exposure to participants. The safety and protection of participants through thorough and effective risk management policies and procedures is paramount. Legal and financial protection to all involved is also necessary. Whilst insurance makes no contribution in preventing undesirable physical events occurring, which is obviously the priority in managing risk, it is an effective means of financing risk by transferring cost to an insurance company.

Would insurance respond to provide a financial safety net in the situation outlined above i.e. cover for the fine/penalty imposed under Workplace Health and Safety legislation plus other costs incurred?



Public Liability insurance is usually the first cover that organisations would look to in such a situation. Such policies respond to common law actions that claim negligence in regard to incidents resulting in injury (including death) and/or property damage. They do however contain a specific exclusion in regard to fines and penalties. Public liability insurance therefore would provide no relief in regard to the fine imposed on Townsville Gymnastics Association nor other expenses they may have incurred.

Liability covers such as Directors and Officers and Association Liability insurance exclude liability that emanates from bodily injury or property damage and also exclude fines and penalties, suggesting no relief to the situation outlined. However in recent years we have seen the development of “professional risk insurance packages” that provide additional protection over and above traditional covers. A common name for these programs is management liability insurance and such packages can include relief for fines, penalties and associated expenses.

So, let’s look at the potential benefits that may be provided under a professional risk package that could address a situation such as the tragic accident outlined.

Addressing the fine itself, the statutory liability section of the professional risk package will pay on behalf of the insured any pecuniary fine or penalty that they become legally obligated to pay as a result of their breach of duty, error, omission, breach of trust, misstatement, misleading statement or neglect; as imposed by a regulatory authority acting under a statutory Act.

Significant expenses can be incurred by an insured in attending to official investigations and enquiries, such as the investigation Workplace Health and Safety Queensland conducted into the gymnastics incident. Professional risk insurance packages will cover reasonable costs, charges, fees and expenses incurred in attending to such official investigations, examinations or enquiries, subject to the insurer’s prior consent. This includes legal representation reasonably required for the attendance at such investigations and any defence costs.

Whilst no insurance benefit can ever take away the tragedy of an incident such as that outlined it can at least assist in ensuring that the organisation involved does not face financial liabilities that have the potential to close its doors.

The benefits highlighted in this article pertain specifically to an incident such as that experienced by Townsville Gymnastics Association. The overall protection provided by a professional risk insurance package extends far beyond the specific benefits outlined here. It can include such covers as Directors and Officers liability (including entity cover), employment practices liability, professional liability, internet liability, crime coverage and more.

It must be emphasized that this article provides a broad summary only. Insurers will have various covers available with wording variations. This article does not detail policy exclusions, definitions, terms or conditions, nor does it review the policy wording of any particular insurer. It is very important when considering the purchase of any insurance policy that a full appraisal of the policy wording, including any endorsements that may be applied to the policy, is conducted.

As part of an effective risk management program it is necessary to continually review risk exposures and identify effective actions for treating those risks. Insurance will be included in those treatment options and it is important to realize that far greater insurance cover is available now than has existed in the past. OAMPS Insurance Brokers has staff that specialise in risk management and insurance for sport and recreation organisations and we welcome the opportunity to assist administrators in keeping up to date with developments in insurance.

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