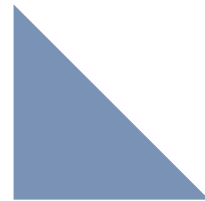




THIRD PARTY LIABILITY INSURANCE (TPLI)

Frequently Asked Questions & Answers



Prepared by: Small Craft Harbours
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Fisheries and Oceans
Canada

Pêches et Océans
Canada

Canada



DISCLAIMER

This document is not intended to replace professional advice, the insurance policy, its terms, conditions and exclusions. It is purely intended as informative and could be modified as a result of a policy change.

If legal advice or other expert assistance is required with respect to a specific issue or circumstance, the services of a competent professional should be sought.




Frequently Asked Questions and Answers






Does an HA require additional insurance when hosting an event on their site?


Any events outside of normal day to day operations taking place at an harbour authority (HA) managed sites should be referred to the insurance broker. The HA shall complete the special events form and send it to their Small Craft Harbour (SCH) contact, who will provide the form to SCH Headquarters (HQ) prior to the event taking place (festivals, meetings, festivities, etc.). SCH HQ will then send to the insurance broker who will review the information regarding the special event taking place on HA property and advise if additional insurance is required.



Does an HA require additional insurance when co-hosting an event led by an outside organization on their site?

Yes, this is highly recommended. HAs and SCH employees should be advised of any commercial operation, contracting or event held at SCH sites. The HA must ask the organisers to provide proof of a third party liability insurance (TPLI). The TPLI certificate must extend additional insured status to the HA and to Fisheries and Oceans Canada, and include a provision that a notice of 30 days must be provided in advance of cancelling a policy. In case of cancellation, this notice should be given by the third party's insurer to the HA and SCH prior to the event taking place. It is recommended that HAs have a contract, or user license in place with the third party outlining the requirement for insurance.






If an incident occurs as a result of activities on a HA property organized by an outside organization, is the HA protected by the TPLI policy?

Yes, the TPLI policy will defend the HA if a claim is made against it. The policy will respond as excess over the primary limits of the outside organization's insurance policy. HAs must receive appropriate certificates of insurance from any outside organization authorized to conduct business or activities on HA property prior to the event.



Are HA owned buildings and equipment covered by the TPLI policy for fire, theft, or damage?

No. This policy only responds to claims for damage to third parties. Damage to a HA property must be insured separately by the HA.



If an HA employee or volunteer moves a harbour user's vessel and damages it, is the HA covered by the TPLI policy?

Yes, as long as the employee or the volunteer was in the course of performing his or her duty at the harbour.




Are contractors hired by the HA to do work for the HA covered by the TPLI policy?

No, they must have their own liability insurance. The HA should ask contractors to provide proof of a third party liability insurance (TPLI). The TPLI certificate must extend additional insured status to the HA and to Fisheries and Oceans Canada, and include a provision that a notice of 30 days must be provided in advance of cancelling a policy. In case of cancellation, this notice should be given by the third party's insurer to the HA and SCH prior to the event taking place.



Are commercial fishing vessels insured by the TPLI insurance?

No, commercial fishing vessels should be insured by their respective owner. The third party liability insurance policy will only cover claims brought against the HA for damages to third party commercial fishing vessels if the vessel was in the care, custody or control of the HA and the HA is found to be at fault.



Are vessels owned by the employees, volunteers, directors or officers covered by the TPLI insurance while they are secured at the dock?

If employees, volunteers, directors or officers are not on harbour duty and are acting as a separate legal entity than yes, the policy should respond. However, all vessels should be insured by their respective owner. The third party liability insurance policy will only cover claims brought against the HA for damages to third party vessels resulting from actions or the lack of, whilst otherwise in their care, custody and control of the HA and the HA is found to be at fault.



If a vessel goes aground in the harbour, is the HA covered by the TPLI policy?



The HA is covered against liability claims arising from incidents that stem from the operations of the HA. The grounding would have to be as a result of HA negligence for the policy to respond.


If an HA owned fuel tank leaks, is the HA covered by the TPLI policy?

Yes, but only under certain conditions. This insurance excludes bodily injury or personal injury or loss of, damage to or loss of use of property, directly caused by seepage into or onto or pollution of or contamination of air, land, water or any other property, however caused and whenever happening. This insurance also excludes any liability in respect of disposal or dumping of any waste materials or substances. The words “loss of”, “damage to” or “loss of use” as used in this policy with respect to the word “property” includes, but shall not be limited to:

- a) the cost of containing, evaluating, monitoring, controlling, removing, nullifying or cleaning-up any seepage, polluting or contaminating substances;
- b) loss or damage to or loss of use of property directly or indirectly resulting from subsurface operations of the Insured;
- c) removal of, loss of or damage to sub-surface oil, gas or any other substance.

The exclusion of the Seepage and Pollution Clause shall not apply where such seepage or pollution or contamination:

1. was accidental and neither expected nor intended by the HA; and,
 2. the occurrence is detected within seventy-two (72) hours of the commencement of such seepage, pollution or contamination; and,
 3. the occurrence is reported to Insurer within ninety (90) days of the occurrence becoming known.
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On the basis that Items 1, 2 and 3 above are complied with, a), b) and c) above are covered hereunder including bodily injury or personal injury or loss of, damage to or loss of use of property directly caused by seepage into or onto or pollution of or contamination of air, land, water or any other property.



If the harbour burns down and third party private property is destroyed, is the HA protected by the TPLI policy?

The third party liability insurance policy will provide and pay for the defense of the legal action arising from this event, subject to the policy limits, terms and conditions. Third party property would be covered under the TPLI liability policy if the HA is at found to be at fault and the cause arises from an insured peril.



Is the HA covered by the TPLI policy when acting as a contractor to install floating docks for another HA?

The HA will be covered for third party liability, as long as the installation of the docks is considered normal day to day operations of the HA.



What are considered normal day-to-day operations of an HA?





Day-to-day operations include, but are not limited to:

- explaining harbour rules and policies, regulations, and rate structures to harbour facility users;
- controlling parking areas;
- ensuring trash and used oil are disposed of in appropriate containers;
- ensuring the facilities are clear of personal property and spare gear;
- ensuring that users of harbor equipment comply with operating instructions and restrictions;
- reporting, in writing, the details of all incidents (e.g., fires, damage to property, etc.).



Does the TPLI policy cover liability for volunteers, directors and officers?


No, this policy does not cover volunteers, directors and officers for liability arising from "wrongful acts" (i.e., any breach of duty, neglect, error, misstatement, misleading statement or omission in the administration of the HA). This must be insured by a separate policy. The Harbour Authority Corporation (HAC), a federally incorporated body working for HAs offer to volunteers and directors and officers of the HA optional accidental death and dismemberment and bodily injury insurance as well as directors and officers liability insurance. This policy excludes employees of the HA. For more information, please contact the HAC by email at duplessis.management@gmail.com or by telephone at 1-506-625-4556.




Are volunteers, directors and officers of the HA covered by the TPLI policy for medical payments if they sustain an injury while conducting business for or on behalf of the HA?

No, this is not a group accident policy. The HAC, a federally incorporated body working for HAs offer to volunteers and directors and officers of the HA optional accidental death and dismemberment and bodily injury insurance as well as directors and officers liability insurance. This policy excludes employees of the HA. For more information, please contact the HAC by email at duplessis.management@gmail.com or by telephone at 1-506-625-4556.


Is the HA insured for the death or injury of a volunteer, a director or an officer under the TPLI policy?




No, separate coverage is required. The HAC, a federally incorporated body working for HAs offer to volunteers and directors and officers of the HA optional accidental death and dismemberment and bodily injury insurance as well as directors and officers liability insurance. This policy excludes employees of the HA. For more information, please contact the HAC by email at duplessis.management@gmail.com or by telephone at 1-506-625-4556.



Are HA employees covered under the optional “*accidental death and dismemberment, and bodily injury insurance*” and the “*directors and officer’s liability insurance*” policies?



HA employees are not covered under these insurance policies. If an employee becomes injured while performing their duties as an employee of the HA, provincial workers compensation may be available. Workers compensation is a provincially regulated entity and will vary by province.



Is the HA covered by the TPLI policy if it is sued by a volunteer who has been injured while working for or on behalf of the HA?

A volunteer, defined as a person who offers his services to the HA voluntarily and without payment and who is not an elected official, may be eligible for medical payment for bodily injury caused by an accident while performing work for the HA. The TPLI policy will cover the cost to investigate the incident and the defense of a legal action against the HA. The Insuring Agreement and Exclusions relating to medical expenses can be found in the current policy in “Section C: Medical Payments Clause”.




What if the same HA repeatedly submits similar claims?

If HAs are aware of a situation that is hazardous within their boundaries, every step should be taken to fix it. Following a claim, the insurer can also make a recommendation for improvement of a site and advise the HA that if it does not proceed with the recommendation, the insurer can review its position on the entire account. If recommendations are made and not implemented a claim may be denied and/or the cost of coverage could increase. This is not likely to happen without repeated claims issues being attributed to one HA in particular.



Does the TPLI policy collect a deductible towards claims submitted?

Changes have been made to the TPLI policy. The insurer, C N A, confirmed that as of September 21, 2020 the deductibles are now being waved.



If an HA has a question about the TPLI insurance coverage or a claim, can they contact the insurance company directly?

No. HAs that have questions should communicate with their SCH contact. If the SCH contact is unable to answer the question, they ask SCH HQ for support. In the event SCH HQ does not have the answer, the question is sent to the insurance broker. When an answer is received, SCH HQ will inform the SCH contact who shall notify the HA.

What can HAs do to protect themselves from third party claims?

PREVENTION

HAs can protect themselves from third party claims by implementing preventative measures in their day-to-day operations. Preventative measures include but are not limited to:

Inspections

- Creating a facility inspection schedule outlining all aspects of harbour operations and facilities that should be inspected and when will allow the HA to identify unsafe conditions and potential problems. Implementing and recording inspections will help harbour staff to identify potential hazards, trouble spots and structural damages, and to address them before they become a liability.
- Performing visual inspections on a daily, weekly, monthly and yearly basis, as outlined in the inspection schedule, and following major incidents, such as a structural failure, a severe storm, or the collision of a vessel with the harbour structure. More information on visual inspections can be found in the HA manual - Operations section.

Fire prevention

The HA may consider establishing rules and procedures to minimize the risk of fire. For example, a HA may:

- require that each vessel have a properly maintained fire extinguisher;
- encourage people to keep their work area clean and free of rubbish;
- restrict smoking at the harbour;
- conduct regular inspections of the fire hose and firefighting equipment;
- instruct harbour users to replace all worn or frayed electrical cords and extension cords;
- keep rags in closed metal containers.

What can HAs do to protect themselves from third party claims? (continued)

Health and safety

The main elements of prevention for health and safety in the workplace include:

- identifying workplace hazards;
- training new employees and volunteers on job procedures and hazards;
- ensuring that protective equipment is available and kept in good order;
- posting electrical safety procedures;
- training employees and volunteers on material handling practices and procedures;
- training employees and volunteers on rescue and emergency procedures;
- providing fire prevention and fire intervention training.

Signage

The HA may use signs for safety and operational issues such as:

- warning and advising users of potential dangers and hazards;
- clearly communicating which activities are restricted, such as swimming and diving;
- safeguarding assets; for example, informing users of load limits;
- instructing people about what to do in case of an accident or emergency;
- communicating the HA rules and policies.

What can HAs do to protect themselves from third party claims? (continued)

ACTION

It is recommended that when any issues are identified or arise, HAs should address them immediately and implement corrective measures. Acting in a timely manner will reduce or eliminate the risk of a third party incident and demonstrates the HA practiced due diligence.

CORRECTIVE MEASURES FOLLOWING AN INCIDENT

In the event a third party was involved in an incident on HA property, HA staff should perform a detailed analysis of the incident to identify the root cause. The goal of the analysis is to identify what caused the third party to be involved in an incident and to evaluate the corrective measures that should be put in place to avoid the incident from reoccurring. Corrective measures may include:

- additional signage;
- repair damaged structure;
- conduct a safety talk with HA staff and volunteers;
- remove hazards;
- review inspection schedule.