

# Broker's Notes

## Contractors vs. Employees & Volunteers

**March 2006**

It is a common practice in the Golf, Curling and Country Club industry to “engage” individuals as “Independent Contractors” instead of as “Employees.” It is also common practice to use the services of “Volunteers” (sometimes “compensated” with free golf and sometimes not).

There are definitely some significant questions about the “legality” of the contractor’s self-employed status and the taxability of “volunteers’ compensation”, however these are not our issues. Articles about these issues are included on our website and should be referred to.

However, aside from the “legal status” issues, these practices create some problems for the Insurance Contract. Our policy wordings and underwriting practices address these issues as follows:

### **Volunteers:**

In order to adequately protect these people from liability suits, our policy specifically defines them as EMPLOYEES. They are automatically covered as “Additional Insureds” for liability resulting from their duties at the club.

While this is generally beneficial to the volunteer, it also has an impact on other sections of the policy which may/will limit coverage.

For example, liability coverage to the club for volunteers injured on the “job” is subject to the EMPLOYER’s LIABILITY sub limits; Theft by volunteers is limited to the EMPLOYEE BOND limit; volunteers’ personal effects would be limited by the EXTENSION of COVERAGE and the Club’s Subrogation Rights against volunteers may be restricted.

### **Employees vs. Contractors:**

**Employees** are covered as Additional Insureds for liability under the contract as per Standard IBC wordings for liability suits resulting from their activities within the scope of their duties for the Club.

Employee’s property is covered to the extent that it is “used in the business of the Insured” (e.g. a mechanic’s tools would be covered on premises as if the Club owned them) and Personal Effects would be covered as per the standard Extensions of Coverage outlined in the policy.

**Independent Contractors** are NOT covered by the policy.

Contractors' property (inventory, equipment, etc.) is not "used by the Insured" and is therefore not covered by the policy. It is used by the contractor in the conduct of his/her business.

The Contractor may be covered by the blanket Additional Insured clause under the liability section of the policy, (assuming a contractual obligation to do so) but the protection is limited to the vicarious liability "...resulting from the operations of the Insured"; not the contractor's operations. If the activity that results in a lawsuit falls within the duties of the contractor's agreement with the Club, it is outside of the scope of the policy coverage.

In addition to the uninsured exposure for the Contractor, we also consider "uninsured contractors" as an additional risk exposure to the Club. Under the terms of "Joint & Several" liability the Club is automatically likely to be named as a co-defendant in any lawsuit, and in the absence of insurance coverage for the contractor, the club will likely have to "foot the bill".

We will surcharge the liability premium of any club that allows uninsured contractors to operate on its premises.

We have a program (GOLFPAC) that can provide liability coverage for most club subcontractors who operate exclusively at the club. It provides substantial limits of coverage at reasonable prices, however it does not offer "Property" coverage and due to the small premiums involved it is also not offered on a "wholesale" basis.

Information about GOLFPAC is available on our website.