



RMA
INSURANCE

Administrative Liability Errors & Omissions D&O, Directors & Officers D&O

Parkland County May 7, 2019

Today's Presentation is intended to answer the question?

I am a Councillor for Parkland County. What if I am personally sued as a result of my position or duties as a Councillor, am I Covered?

Yes You Are

Under Section 2 Administrative Errors and Omissions of the General Liability policy, Directors & Officers Liability Coverage

If a Claim is made for a wrongful act in breach of these duties the Genesis liability policy includes coverage for Councillors, while acting within the scope of their duties, honestly and in good faith.

Why should Directors & Officers (Councillors) be concerned about this coverage?

- Protection of their personal assets
- Protection of Municipal assets
- Provides coverage for wrongful acts which typically include breach of duty, neglect, error, omission, act, misstatement or misleading statement

A Duty is imposed on councilors under common law and the Alberta Municipal Government Act. Briefly:

Common Law Duties – Fiduciary Duty and Duty of Care

- Honesty
- Acting in Good Faith
- Must Avoid Conflicts of Interest
- Must Act within the Scope of Your Duties
- Acting in the Best Interest of the Municipality

MGA Act - Division 3

- Generally, to consider the welfare and interests of the municipality as a whole

If a Claim is made for a wrongful act in breach of these duties Genesis liability policy includes coverage for Councillors, **while acting within the scope of their duties**, honestly and in good faith, the policy provides up to \$25,000,000 (aggregate) in liability coverage for Directors and Officers (D&O), Councillors of Parkland County.

Insuring Agreement

The Policy will pay:

a) Up to \$25,000,000 (aggregate) for those sums that the insured becomes legally obligated to pay for compensatory damages as a result of a “Claim” made against them for a “Wrongful act” and defend and “Action” made against them for a “Wrongful Act”.

Definitions:

“Claim” means an oral or written demand for a notice of an intention to seek monetary, non-monetary or injunctive relief for a “wrongful act”.

“Wrongful Act” means any actual or alleged breach of duty, neglect, error, misstatement, misrepresentation, omission or any other act in the discharge of the Insured’s duties.

“Action” means:

- i) In all Sections of this Policy, a civil proceeding in which compensatory damages because of “*bodily injury*”, “*property damage*” or “*personal injury*” to which this insurance applies are alleged;
- ii) In Section Two of this Policy, a civil proceeding against an Insured for compensatory damages or non-monetary relief, where the allegations against the Insured are not otherwise excluded by the terms and conditions of this Policy.

Insuring Agreement

Example:

a) A Developer alleges a decision by Council to deny a subdivision has had a negative financial impact of their business and is suing for damages. A Councillor is named personally for not considering the overall welfare of the municipality. Our policy covers defense costs and awards for compensatory damages.

Insuring Agreement

b) Up to \$25,000,000 (Aggregate) to reimburse the Insured for any reasonable “Costs, Charges, and Expenses” (excluding salaries) of the Insured in defending any “Action” made against them for a “Wrongful Act or which originally coverage does not exist and denied a defense, provided that such “Claim” is subsequently found groundless by a court of law or an arbitration proceeding approved previously by the Insurer;”

Insuring Agreement

Example:

b) Claim was submitted to RMA and we declined to defend stating no coverage but proceeded to court and was found groundless. Our policy would then reimburse the Councillor for all reasonable expenses, excluding lost wages.

Insuring Agreement

c) Up to \$250,000 to reimburse the Insured for any reasonable “Costs, Charges and Expenses” (excluding salaries) of the Insured which the Insured may incur in defending any quasi criminal proceeding instituted against the Insured pursuant to either the Alberta or Canadian Environmental Protection and Enhancement Act or the Occupational Health and Safety Act, provided that such “Claim” is subsequently found groundless by a court of law or an arbitration proceeding approved previously by the Insurer. The control of defense and resultant costs may, at the Insurer’s discretion, be directly assumed by the Insurer rather than as a reimbursement.

Insuring Agreement - Example

A Claim was brought under OH&S act, stating a breach of fiduciary duties in protecting workers safety, but claim is found groundless. Our policy will reimburse insured all reasonable costs (excluding salaries).

Insuring Agreement

d) To pay costs up to \$250,000 that were actually and necessarily incurred by the Insured to obtain legal representation or legal advice or for legal costs incurred by the Insured for representation at a judicial (criminal) proceeding, in connection with charges laid against the Insured alleging an offence under a “covered act”, but only if:

Insuring Agreement

- Insured is acting within the scope of their office
- the Insured is not found guilty of, or does not plead guilty or no contest to, the charges laid.

Insuring Agreement

e) Up to \$250,000, the Insurer will pay “defense expenses” actually incurred by the Insured to defend against charges laid against the Insured alleging an offence under any Municipal Conflict of Interest Act, but only if:

Insuring Agreement

- Insured is acting within the scope of their office
- the Insured is not found guilty of, or does not plead guilty or no contest to, the charges laid.

Typical Exclusions

- Fines, penalties, punitive or exemplary damages;
- If found guilty of a criminal or illegal act
- Taking pay offs, bribes
- Illegal personal profit, benefitting from inside information;
- Claims paid by other insurance policy
- Breach of Fiduciary duties relating to employee pension or benefit plan.

Typical Exclusions

- “Claims” or “Actions” arising out of the failure to comply with any law concerning Workmen’s Compensation, Unemployment Insurance, Canada Pension Plan or any similar law;
- Claims prior to policy inception
- Professional exclusion – they should have their own E&O, D&O coverage
- Wrongful dismissal claims

Typical Exclusions

- “Claims” or “Actions” arising out of the ownership, maintenance, use, selling, supplying, delivery or distributing of natural gas;
- Claims resulting from false arrest, detention, imprisonment and wrongful eviction
- “Claims” or “Actions” arising out of “constitutional” or “human rights” issues;
- Breach of contract

Questions???

Thank You

