

NU

NATIONAL
UNDERWRITER
PROPERTY & CASUALTY



GET in the GAME

WITH AMPLE CAPACITY, NEW PLAYERS AND NEW EXPOSURES TO CONTEND WITH, THE SPORTS & RECREATION MARKET REMAINS AS COMPETITIVE AS EVER.

BY MICHAEL P. VOELKER

PICTURE A SOCCER GAME IN YOUR MIND. Visualize a field, goals and two teams of players. Then imagine each player wearing a large plastic bubble. It looks...well, it looks pretty much just like it sounds.

The game of “bubble soccer” is one of many new sports ranging from “foot golf” (played with a soccer ball and no clubs) to “bossaball” (a combination of volleyball and gymnastics) that take a creative twist on traditional games. In some cases, that twist trends to the extreme: Tough Mudder, for instance, features amateur athletes contending not only with obstacles and lots of mud, but also with electric cables that administer 10,000-volt shocks.

The emergence of increasingly creative sports creates a whole new game for underwriters as well. “Because these



‘extreme’ sports are so new, it’s a little difficult getting a handle on the exposure,” says Brian Himmer, product manager in the underwriting department at Philadelphia Insurance Cos.

Himmer hasn’t seen a bubble soccer account cross his desk—yet. However, Philadelphia and many other insurers in a market characterized by ever-growing capacity are willing to write a wide array of sports & recreation risks despite the inherent difficulty of doing so.

“We will consider almost any sport—although we will review new types of activities very, very closely,” says Himmer. “We feel we have the experience and expertise to assess that the [teams] have proper controls in place.”

CONCUSSION IMPACT

New types of sports aren’t the only development challenging carriers. In contact sports, one chief area of concern is concussions. In October 2013, the NFL settled a \$765 million class-action lawsuit brought by former players suffering a variety of debilitating residual effects caused by head injuries.

Some suggest that increased awareness of the damage that can be done to football-playing youths could factor in the drop-off in participation in Pop Warner, the nation’s largest youth football program—which saw a 9.5% decline between 2010 to 2012, the largest two-year drop in decades. That development doesn’t surprise Robert Jackson, who spent 11 years in the NFL before founding Cleveland-based insurance agency Jackson Dieken & Associates with fellow NFL colleague Doug Dieken.

“Growing awareness of the risk related to concussions will change sports and sports insurance forever,” says Jackson, the agency’s principal. In addition to specializing in coverage for amateur sports teams, Jackson Dieken & Associates also insures the Cleveland Browns franchise.

“If you’re a sponsor of a sports league, you’re open to liability. With everybody knowing about concussions, you can’t say you were unaware of the exposure, so from a liability standpoint that is a concern,” says Rudi Hoffman, the agency’s marketing manager.

John Sadler, president of Columbia, S.C.-based brokerage Sadler & Co., says litigation won’t stop with the NFL’s quiet settlement of a case with far-reaching legal implications; precedence has now been established. “Plaintiffs’ attorneys are undoubtedly eyeing brain injury as the next class-action bonanza, similar to asbestos or construction defect, and the funding source would be coverage under general liability and excess liability.”

Although significant concussion litigation has yet to impact amateur football and other sports, brokers report that in response to concussion concerns, many insurers have been adding new exclusions to both CGL and professional liability forms.



“Most carriers are addressing the concussion or brain injury risk by either using a total brain injury exclusion, limiting the each occurrence and aggregate limits for participant legal liability, or requiring more stringent risk management controls,” Sadler says.

in conjunction with participation in a concussion-management training program. Additional programs also focus on training teams in newer, seven-step test methods when concussions are suspected.

players tripping in holes on the field and other more common mishaps, Himmer says. He adds that claim activity in the sports & rec space has been relatively steady over time: “Not much has changed over the past 20 years, except perhaps for a greater willingness to sue.”



“This business exists everywhere. Every agent that’s located from small towns to big cities can find groups and clubs in both youth and adult leagues, with account sizes that range from minimum premium all the way through six figures,”

—Scott Greico, President, Middle Market, The Hanover

Sports insurers continue to expand their loss-control efforts both to reduce claims and to distinguish their services in a competitive market. The Hanover Insurance Group, for example, offers its Insurance Professional Development

Likewise, amateur sports teams are responding to the growing awareness around the risks of concussions.

“We’re seeing positive steps being taken by national youth sports associations in football and hockey geared towards protecting young athletes,” says Lorena Hatfield, marketing resources manager at K&K Insurance Group Inc. “It’s an encouraging trend that may help contain the risk for not only concussions, but of a variety of injuries and allow young athletes to participate in healthy sports activities.”

Most team programs rely on the Centers for Disease Control and Prevention’s “Heads Up: Concussion in Youth Sports” training, available on its website, to help keep players safe. Encouraging awareness also can have coverage benefits: Philadelphia offers policyholders a warranty affording concussion coverage

“We’ve learned that the ‘flashlight test’ is not specific and exact enough,” says Jackson. “The focus is on training the trainers and medical people across the country to better assess and analyze players, and we are helping our clients with that.”

There is also a growing movement to require baseline testing of players as part of the standard medical exam required by sports teams. “It shows us that teams are being proactive, rather than just sitting back,” Jackson adds. “That’s important, because not being proactive makes them more vulnerable to claims.”

BEYOND CONCUSSIONS

Concussion claims aren’t the only type of bodily injury claims insurers face. The most frequent claims are trips and falls—spectators falling off bleachers,

series—which includes a suite of courses on topics ranging from maintenance to molestation.

“Premises injuries are where we continue to see claims, whether it’s slips and falls in the locker room, tripping over equipment on the floor, or other areas where proactive maintenance programs can have a huge impact,” says Scott Grieco, president, middle market at The Hanover.

Waivers also are an essential risk management tool for teams. “Having proper waivers is a big plus when we underwrite a risk,” Himmer notes. Last year, Philadelphia introduced its Waiver Saver program to provide health & fitness club and amateur-sports insureds with waiver templates and legal resources to protect their organizations.

STRONG, COMPETITIVE MARKET

With stable claim activity and ample capacity, the market remains competitive—and capacity in the marketplace is strong. “In recent years, the marketplace has been flooded with new programs and carriers entering the sports & recreation niche,” Sadler says. “There has never been more competition or more market options.”

CONCUSSION EXCLUSIONS NOT AIRTIGHT

The standard ISO exclusion for athletic or sports participants is also cited in arguments against coverage for concussion claims under the CGL form. However, Shaun H. Crosner, leader of the Sports Insurance Practice at Dickstein Shapiro LLP, believes that even with this exclusion in place, insurers are still obligated to respond to traumatic brain injuries suffered by participants.

“First, the standard form exclusion only applies to bodily injury sustained while practicing or participating in an athletic contest. These concussion claims often involve allegations related to failure to treat or diagnose a concussion, and that post-injury negligence does not fall under the ‘practicing or participating’ language of the exclusion. Second, many of the recent studies suggest that serious brain injuries are progressive and manifest over time, meaning that an athlete injured in a sporting contest could continue to suffer ‘bodily injury’ after the contest,” he says.

“Even if there are certain exclusions an insurer might reserve rights on, it doesn’t exclude the duty to defend,” Crosner adds.

Although several traditional youth sports—including football, soccer, basketball and baseball—have seen participation declines in recent years, the sports & rec market overall continues to expand. “This business exists everywhere. Every agent that’s located from small towns to big cities can find groups and clubs in both youth and adult leagues, with account sizes that range from minimum premium all the way through six figures,” Grieco says.

In addition to new sports, new types of fitness facilities present opportunity for agents, including the growing popularity of 24-hour gyms and specialized facilities that reflect the way today’s weekend warriors want to work out.

These new, smaller gyms combine group workouts with personal training and focus on high intensity, short duration training, Himmer says.

Younger producers, who are more likely to use those facilities, can help develop that specialization. “The universe of prospects is large, and the subject matter is very interesting for them,” Hatfield says.

K&K offers e-commerce websites to help agents seize opportunity in several specialty areas, including martial arts, gymnastic clubs and sports clinics. The most recent addition, introduced in March, is a site for outfitters and guides. K&K is developing a site for coverage of walks or runs of fewer than 16 miles.

Sadler & Co. offers an automated solution through which agents can access the company’s team, league and sports-clinic programs and get a quote, pay, bind and print proof of coverage documents, certificates for field owners and claim forms in less than 15 minutes.

Account rounding is key. “On these smaller accounts, it’s critical to be able to place all the coverages including general liability, accident, D&O, crime and equipment with a single source in the same transaction,” says Sadler.

“Even though we are in somewhat of a ‘shakedown mode’ around concussions, there will continue to be opportunities in the marketplace for agents,” adds Jackson. “Sports will always be a big part of our society.” 