

Report on Insurance – Hang Gliding and Paragliding Association of Canada

Submitted by Gregg Humphreys

April 24, 2008

Chairperson – Insurance Committee

Following is my report for 2008. It will give you an executive summary and the details of this year's coverage.

This report is intended for the review of the Board of Directors and Executive. I will leave it to them to decide on what portions of the report, if any, should be distributed to the general membership. If they elect to edit the report for distribution, I would appreciate the opportunity to review that edited copy before distribution.

As always, I must qualify my activities, on behalf of HPAC, and any opinions that I have given. I am a licensed, professional general insurance adjuster by vocation however, none of my work on behalf of HPAC is in a professional capacity. My activities are done solely in the capacity of an unpaid volunteer. My companies *Associated Island Adjusters* and *Island Claims Ltd.* are not involved in these activities in any way.

Having said that, following is my report, including a series of emails at the conclusion of the report (in *italics*) which will give you an overview of the activity this year.

Executive Summary

- Insurance has been renewed as of February 14th, 2008.
- We have changed insurers, in order to gain more coverage at a more attractive premium. Our new insurer is Chutter Underwriting as the managing insurance provider and **Kingsway General Insurance Company** as the underwriter.
- Coverage has been broadened to increase the territory - from the previous restriction of the United States operations exclusion to coverage now, anywhere in the World including the USA.
- Coverage has been increased for the benefit of landowners, removing them from the definition of "participants". See explanation below.
- The coverage has been renewed at a policy limit of \$5 million per occurrence.

- Forest Fire Expense coverage has been granted (a requirement in many Crown Land areas) at \$1 million.
- The deductible is \$2,500 per occurrence
- Premium this year has been reduced to \$35,000.

Insurance Program 2008 – General Overview and Summary

As a primary benefit of HPAC membership, all members are protected by a **Comprehensive General Liability Insurance policy** (CGL). This policy is for a one-year duration or term and it requires renewal annually.

Our annual policy expires on the annual anniversary date of February 14. The essential details of our policy last year were:

- our Insurer broker was Megson FitzPatrick Inc. The provider was the K & K Insurance Company, and the ultimate underwriter was Sovereign General Insurance Company, a duly licensed insurer in Canada.
- The policy limit was \$5,000,000 per incident.
- The deductible was \$3,000.
- The cost for one year was \$36,268.
- The policy provides coverage for defense costs and protection from damages assessed against members for bodily injury and/or property damage suffered by third parties result of flying activities.
- Landowners who give us permission to fly onto or off of their land are automatically insured
- Our coverage territory did not include the USA
- The exact policy wording is available to the general membership on our website

Most persons reading this report will be aware of the volatile global insurance situation of the past few years. Long-term insurance market fluctuations have always been cyclical, but the hardening cycle of 2000- 2002 was particularly extreme. As you will also know, in 2002 we found ourselves simply unable to obtain insurance. This was because the risks of Hang Gliding and Paragliding, which have never been attractive to underwriters, who tend to see us as “unconventional risk takers”, were simply too great for the insurers to consider.

When insurance becomes scarce, the laws of supply and demand cause the price of insurance to rise and availability is reduced. The less desirable risk groups suffer the most, as insurers rush to the safest risks possible. As a result, HPAC became a casualty of this trend.

Now, in 2008, the markets have softened to the point where, for the first time in 6 years, we had two insurers interested in our business. Our brokers, Megson

Fitzpatrick Inc. of Victoria, BC, have assisted us greatly in securing overall improvements in coverage. For the details on the discussion of the various coverages, and the decision to change insurers this year, please see attached e-mail appendixes.

New Policy Limit last year

The amount of coverage has been the point of discussion. Because some large commercial landowners require a higher limit, it was agreed to raise our overall policy limit to **5 million dollars**, despite the increase of premium that this generated. In the current liability environment, this amount of coverage is prudent and reasonable. Therefore, for 2008, we continued with this policy limit.

Forest Fire Coverage

To enable flying activities on Crown land, some provincial governments have required special coverage for the cost of fighting forest fires, which may have been caused by our member's activities. Although the risk of our members causing a forest fire is very low, this coverage requirement has been made mandatory by some provincial authorities in order to gain access to their land and therefore, **one million dollars** coverage has been added to our policy.

Investigation expense deductible

As part of the insurance quote this year, Chutter insisted on a deductible for insurance investigation expenses. In my opinion, this would have affected us very negatively. As you will see below, if we were exposed to the first \$2,500 hundred dollars of any investigation expense in the past, this amount would have been paid by us, over and above our premium, in several cases. It was decided to pay higher premium this year to avoid exposure to this expense on a per-occasion basis. Therefore, our only deductible is for cases where payment is actually made on our behalf to third parties.

Site Certificates

As in the past, all landowners who give permission for our members to use their property for flying activities, become automatically "insureds" under our policy. There is no need for them to be named or to be identified in any way. All that is required is that the landowner says that they gave us permission and they will be included in the coverage.

Understandably, many sophisticated landowners will not rely upon this type of verbal declaration of coverage. They require a "site certificate", with their name on it, confirming insurance coverage.

Therefore, we have again established a program where blank site certificates will be provided to our business manager and he will be able to complete these and distribute them to landowners who require this document. The certificates are provided to us free of charge – that is, the charge for the service is included in our overall annual premium.

On the other hand, we have decided to charge people \$10 for the issuance of these documents. I have written to the president on the subject with my opinion it. I suggest that this charge be eliminated in order to encourage the use of this service were required, and to provide this tool to our members to improve our public image with landowners.

Participant's exclusion

This exclusion continues to be in place and, it appears to be an item of some confusion within our membership. Therefore, I wish to take a moment to discuss this point. This is an important exclusion, and one that is basic to our scope of coverage.

All insurance policies have exclusions. This policy has all of the standard insurance policy exclusions (such as that for remote things such as nuclear accidents and less remote things such as the use of automobiles) but in our case, there is the special “participants exclusion”.

Because of this exclusion, “Participants” cannot bring a claim under this policy. Participants *are* covered from claims brought against them.

I have received requests for definitions of “participants”. This is not defined in our policy. In cases where words are not defined, the standard dictionary definition is relied upon. Therefore, any claim brought against a member by anyone who participates in the flying activity that gave rise to an incident, would not be covered by this policy. You can see that a “landowner” could potentially be considered to be a participant and this has been an important and potentially difficult point.

To address that point, in 2008, we have secured the insurer's agreement that the participant exclusion does not apply to owners and/or lesser of land who have given permission for use of their land for hang gliding and paragliding activities when the participant has signed a release, waiver and assumption of risk for releasing the owner and/or lesser of the land. In other words, the insurer will now defend landowners who are sued by participants.

This is a significant step forward and one which I personally and very pleased to see added to this year's coverage.

With reference to the overall participants exclusion, it seems from some of the enquiries and emails that are sent to us from members, that some of our members do not understand this section of the policy. I think that the confusion seems to be that some members ask the question: "If this insurance is here to protect participants, and participants are our flying members, how can participants be excluded?"

Our members are certainly "participants" and they are covered for claims brought *against* them by third parties. (Third parties are persons and groups who are not been in this insurance policy-for example, members of the general public.) Members are not covered for claim brought against them by other participants. There is no coverage to protect participants *from* participants.

For example, if you crash into another glider and the other pilot, a participant in the sport, sues you, you have no coverage under this policy. This is because you were both taking part in the sport and this policy does not intend to cover you for claims brought by other pilots. This exclusion, of course, also refers to *any* other participant; such as tandem passengers, students, and other pilots.

This is important for members to know. If a pilot takes a friend flying, as a tandem passenger, and passenger is injured, our liability policy will not protect the pilot from a claim against them by the *participant* tandem passenger. Anyone contemplating doing this should have a solid waiver of liability to protect themselves.

On the other hand, if you crash into a spectator at a flying event and injure them, you are fully protected from a lawsuit that they may bring against you. I hope that this is clear.

Statistical basis for coverage

The insurers give their premium quote based upon numbers of "insureds". Officially, at the time of going to the insurers to get a quote, our membership numbers were given to me - and forwarded to the insurers as follows:.

Total Members	808	(Full + Family(no mag) memberships)
HG Pilots	286	(note overlap, some are both HG AND PG, see below for breakdown)
PG Pilots	538	
Number of Schools	16	

Note: it's up to the instructors to create the listings, and it's not mandatory, so most don't . HPAC doesn't insure or manage schools, it manages instructors.

There are 64 current instructors, or 103 if you include those who's currency criterion have lapsed in the last 6 months.

HPAC/ACVL Membership Statistics

	<u>all</u>	<u>Male</u>	<u>Female</u>
all	809	738	71
Full	782	731	51
Asso	0	0	0
Famil	26	6	20
Mag	1	1	0
Temp	0	0	0

Directors and officers coverage

As for directors and officers coverage, they are included in this CGL policy as named insureds for bodily injury and property damage claims. We do NOT have specific Directors and Officers coverage separately.

That type of coverage is a whole different matter and completely different coverage. Instead of coverage is generally there for loss caused by financial impropriety or failure to follow *fiduciary* duties. On the other hand, Bodily injury and Property damage is covered under our policy, and excluded under most directors and officers policies.

If members of the Board require more detail in this regard, perhaps they can put their specific questions to me and I will pass them onto the insurers or alternatively, they could speak directly to David FitzPatrick, at the brokerage Megson FitzPatrick.

Report conclusion

I trust that this gives you an overview of our coverage for 2008. As part of this report, I am attaching appendixes of e-mails exchanged during the discussion relating to policy renewal.

Any questions can be brought me by telephone or e-mail at my usual contact locations.

Submitted by,

Gregg Humphreys

April 24, 2008

Appendixes

e-mail

De : Gregg Humphreys [mailto:ghumphreys@islandadjusters.com]
Envoyé : 6 février 2008 13:01
À : Hang Gliding Exec; domjuretic@videotron.ca
Objet : Insurance quote

Executive, Feb. 6, 2008

Things are a little more interesting this year with regard to our insurance renewal, in that we now have, as of Feb. 6, two insurers interested in our business.

Our current insurer K & K, has been quite good and has come back this year with a quote (see attached email to Amir yesterday). An insurer whom we had several years ago, Chutter Insurance Services, has now expressed interest and has given us a lower quote, but with an increased deductible. The Chutter offer increases coverage as well but the negative of the deductible change could be significant.

I had a long discussion with our broker just now, going over the intricate details, and I asked FitzPatrick to set out a written comparison of the two proposals for us. I have my own thoughts on the basic concepts that we just discussed but will await his email, which will likely cover off many of them. I will send that to you asap.

So you know, the two quotes are at \$36,268 from K & K and \$32,624 from Chutter but, the increased deductible exposure could quickly eat up that difference. I give you these numbers now, just so you are generally aware of the range of discussions.

Email to Gregg Humphreys from David FitzPatrick Feb. 7

Hello Gregg:

I have received renewal terms from K&K (Sovereign General Insurance Company) who are the incumbent insurer and I have also received terms from Chutter Underwriting (Kingsway General Insurance Company) who were your insurer prior to K&K taking on the account.

K&K have quoted \$36,268.00 for the same terms and conditions as the expiring policy. Your current limit of liability is \$5,000,000 per occurrence including Fire Fighting Expenses at \$1,000,000 and the coverage is subject to a \$2,500 Bodily Injury / Property Damage deductible. Last year's premium was \$36,268.00 and was based on 760 members. The renewal premium of \$36,268.00 is based on 808 members.

Chutter Underwriting have quoted \$32,624.00 for a \$5,000,000 limit of liability per occurrence including Fire Fighting Expenses at \$1,000,000 and the coverage is subject to a \$2,500 Bodily Injury / Property Damage including fees deductible.

Under this deductible you would be responsible for the first \$2,500 of any investigative, adjusting or legal costs associated with any claim incident even if the incident did not result in a claim against you. Under your present insurance with K&K you are not responsible for these costs.

The Chutter wording contains two advantages that are not included in your present coverage with K&K. The first advantage is the Policy Territory applies to Bodily Injury and Property Damage anywhere in the world. Your present coverage with K&K contains a USA operations exclusion. The second advantage is that the Participant's Exclusion under the Chutter wording does not apply to owners and/or lessors of land who have given permission for use of their land for hang gliding or paragliding activities when the Participant has signed a Release, Waiver and Assumption of Risk form releasing the owner and/or lessor of the land. The Participant's Exclusion under your coverage with K&K contains a full Participant's Exclusion which applies to all insured's including owners and/or lessors of land.

Please contact me if you have any questions regarding the above Gregg and also to confirm how you wish to proceed with coverage.

Regards

David FitzPatrick, BA, CIP, CCIB, CRM

Account Executive

David FitzPatrick's email forwarded to the Executive with
Comments *in red* added by Gregg Humphreys

*I have received renewal terms from K&K (Sovereign General Insurance Company) **who are an excellent company and who have worked well with us over the past several years**, who are the incumbent insurer and I have also received terms from Chutter Underwriting (Kingsway General Insurance Company) **also a good account administrator however, Kingsway's claims performance is not as highly rated currently** who were your insurer prior to K&K taking on the account.*

*K&K have quoted \$36,268.00 for the same terms and conditions as the expiring policy. Your current limit of liability is \$5,000,000 per occurrence including Fire Fighting Expenses at \$1,000,000 and the coverage is subject to a \$2,500 Bodily Injury / Property Damage deductible. Last year's premium was \$36,268.00 and was based on 760 members. The renewal premium of \$36,268.00 is based on 808 members. **This equates to a reduced premium on a "per pilot" basis over last year. The terms of the policy are adequate for our needs. Take note of the deductible of \$2,500, which I understand that we would currently assess against any pilot who is the subject of the claim. (I am not sure if the BOD has developed a specific administrative policy regarding how to deal with any deductible but, I believe our earlier discussions were on this basis - ie responsible pilot pays.)***

*Chutter Underwriting have quoted \$32,624.00 for a \$5,000,000 limit of liability per occurrence including Fire Fighting Expenses at \$1,000,000 and the coverage is subject to a \$2,500 Bodily Injury / Property Damage including fees deductible. **This is a lower premium by \$ 3,644 but note the "including fees" deductible.***

*Under this deductible you would be responsible for the first \$2,500 of any investigative, adjusting or legal costs associated with any claim incident even if the incident did not result in a claim against you. Under your present insurance with K&K you are not responsible for these costs. **Therefore, if we have no claims, this feature is of no consideration but, if we go by our history, the claims that have been made have all involved fees (lawyers and investigators). Under this option, the insurance company will bill us \$2,500 for each claim regardless of any payment made. If we look historically, our claims have all involved defence costs and investigation costs.***

Eg. In our Mar.25/06 Pilot/passenger claim at Mt.Tremblant cost \$11,091 to defend. We paid \$0 but under Chutter policy, we would pay \$2,500.

In our Aug/06 claim in Pickering, there were \$1,581 in expenses. We paid \$0 but would now pay \$1,581.

In our 2005 claim, there were no expenses - claim denied without investigation

In our Jan/02 claim, there were \$1,000 in expenses.

In our 2001 claim, there were \$2,500 in expenses

In our 1999 claim, there were \$25,000 in expenses.

You can see that this new deductible could quickly eat up the premium savings. These expenses were all generated when a party decided to make a claim against us. When that happens, regardless of liability, groundlessness or reasonableness, costs are incurred by the insurer. These would be now be passed on to us. How many will we have this year? Impossible to know but this list shows what would have happened to date.

*The Chutter wording contains two advantages that are not included in your present coverage with K&K. The first advantage is the Policy Territory applies to Bodily Injury and Property Damage anywhere in the world. Your present coverage with K&K contains a USA operations exclusion. **This is an advantage but, with virtually every US site requiring USGHA coverage, this is not much of an improvement.***

*The second advantage is that the Participant's Exclusion under the Chutter wording does not apply to owners and/or lessors of land who have given permission for use of their land for hang gliding or paragliding activities when the Participant has signed a Release, Waiver and Assumption of Risk form releasing the owner and/or lessor of the land. The Participant's Exclusion under your coverage with K&K contains a full Participant's Exclusion which applies to all insured's including owners and/or lessors of land. **This is much more significant in my opinion. Currently, landowners are protected from third party claims - that is anyone who says that the landowners are liable for allowing us to carry out our sport using their land. However, if a participant like a pilot, a tandem passenger or a student decides to sue the landowner, our policy does not help our treasured landowners. Our defence has been the release but we know the dangers there. The Chutter policy would defend the landowners from our own pilots, tandems and other participants in the sport, but only if those participants have signed our***

release. Chutter would then use the release to defend the landowner from the claim being brought by the participant.

I hope this last summary is clear. The participant exclusion seems to be the most mis-understood part of this policy, from the questions that I have received over the years.

This is not an easy call. The K & K policy has been very good, with a great system of getting landowners certificates, good coverage and a solid company. The full coverage for fees is a real bonus and is an expense which we will certainly be exposed to, perhaps on multiple occasions, at some point. With Chutter, the added coverage for the US is good but, not very important in my opinion. The extra coverage for landowners is the real benefit here, as well as the small reduction in premium.

My opinion, which is only mine, is to stay where we are - with K & K, and to not expose us to the allmost-certain costs for expenses for claims which will be brought. I don't think that we could pass these costs on to the pilot near as easily as an actual bodily damage or property damage deductible. For example, if a pilot crashes into a little girl and renders her permanently injured, that pilot would likely cough up the \$2,500 for the protection. If on the other hand, someone suggests something more obtuse, like that our pilots are "spying on them while in flight" and decides to sue us, our insurers would have to defend, deny and would incur costs despite the falibility of the allegations. We would then have to pay the first \$2,500 and that, I suggest, will be much more difficult to get from our pilot(s).

Perhaps give this some thought and send back to me, any questions - in as succinct a format as you can muster - and we can make our decision before Feb. 14th.

Gregg Humphreys