

## Road Pilots – Insurance Fact Sheet

### The Issues

It is important that road pilots are offered appropriate insurance protection and advice so they can make decisions on the level of insurance they require to guard against the financial consequences of legal actions from personal injury, property damage or financial losses arising from road pilot services. This fact sheet has been designed to create greater awareness of the issues applying to road pilots and their insurance arrangements.

Road pilots are an advanced warning system for wide loads, warning motorists of an oncoming hazard. From time to time however, they may be expected to offer advice about route selection, direct traffic from either within their vehicle or whilst standing away from their vehicle or perhaps assist with permits or arrange police escorts.

Whatever the service, road pilots have a “duty of care” to their client, the transport company carrying the wide load, the owners of the wide load itself, fellow road pilots, police escorts and of course the general public.

### Now consider these scenarios:

#### Scenario 1)

A third party vehicle travelling in the opposite direction turns a corner to be confronted by the flashing warning lights of the road pilot vehicle. The young third party driver panics and loses control of the vehicle causing it to veer off the road and into a tree causing damage to the car and injury to the driver and its passengers.

#### Scenario 2)

A third party vehicle tries to pass a wide load when the third party vehicle clips the wide load resulting in the third party vehicle veering off the road into oncoming traffic.

#### Scenario 3)

A wide load vehicle carrying a house travels under a low bridge causing the house to impact against the bridge resulting in damage to the house and the transport operator's truck. The bridge also suffers damage.

#### Scenario 4)

A wide load comes to a standstill on a public thoroughfare before reversing into a site just off the roadway. Whilst the wide load is preparing to reverse into the site a third party vehicle doesn't stop in time and runs into the rear of another vehicle sitting in traffic behind the wide load vehicle.

#### Scenario 5)

A wide load comes to a standstill on a public thoroughfare and the road pilot gets out of his car to direct traffic around the wide load which is still on the thoroughfare and preparing to reverse into a worksite just off the road. As a result of the road pilots directions a third party hits another third party vehicle causing damage to the two vehicles and injuries to the drivers.

## Q&A

### **Q: Can road pilots be held responsible for these scenarios?**

**A:** In most of these scenarios it could be argued that the road pilots concerned were not directly responsible for the resulting injury or damage. However, that may not be enough to prevent an action against the road pilot. If an action is commenced the costs of defending the action might be as significant as any award that may be given. Any minor change of circumstances to any of these scenarios can result in very differing outcomes. The success or otherwise of any legal claim will always depend on the circumstances of the particular incident.

### **Q: Do I have adequate insurance in place to protect against these scenarios?**

**A:** Different insurance policies protect against differing types of risks. So the answer to this question varies depending on a number of factors including:

- The type and amount of insurance you have purchased?
- The services you provided at the time of the incident?
- The insurer's interpretation of the policy coverage you have purchased?
- The circumstances of the incident itself and the allegation made by any third party?

If the right range of insurance products were purchased, then cover will be provided within your program.

### **Q: Which insurance policies do I require as a road pilot?**

**A:** All road pilots are required to carry **Compulsory Third Party (CTP)** Insurance for their vehicles whilst being driven on public roads or in public areas. It covers a negligent driver against bodily injury matters caused to others involving the operation of a motor vehicle. This includes the driver(s) and passengers of other vehicle(s) involved in the accident, passengers in your vehicle, push-bike and motor-bike riders and any pedestrians. This Policy is typically provided as part of our vehicle registration.

In addition, we recommend each road pilot arrange at a very "minimum" **Third Party Property Damage or Comprehensive Motor Vehicle** insurance for their motor vehicle. These policies will protect you against damage to someone else's property and even extends to injury liability that may not be picked up by Compulsory Third Party (CTP) Insurance.

All road pilots should purchase **Public Products Liability Insurance**. Public Products Liability insurance protects you against property damage or personal injury claims arising from your business as a Road Pilot. It is important that you have a clear understanding of the overall scope of the policy and the exclusions and limitations of the cover. In particular, the **Exclusions** relating to **Registered Vehicles** and **Professional Liability** should be understood.

You should also make sure your Public Products Liability insurer does not consider Road Piloting a "Professional Service" which may limit the coverage being provided by the Public Products Liability policy. Allsafe Insurance Brokers have addressed this issue with their insurers so as to avoid any reduction in cover.

**Professional Indemnity** insurance may be required depending on your insurer's definition of a "Professional Service" and of course, the services you offer and the way in which you offer them. We recommend you have discussions with your insurance adviser to ensure you have a clear understanding of how your insurance cover will respond in the event of a potential claim.

**Q: Which of these insurance policies would respond to these scenarios?**

**A:** Most lawyers and insurers are reluctant to answer these **scenarios** on a hypothetical basis and would rather be dealing with facts. Most will advise that consideration must be given to the particular circumstances of the incident in conjunction with the allegations of the third party and the coverage provided by the various insurance policies. In any event, lawyers and insurers opinions can vary depending on their interpretation of the respective insurance policies which is why we are looking to provide a tailored insurance solution for road pilots. Therefore it is necessary and recommended that you purchase Public Products Liability, Motor Vehicle Insurance, Workers Compensation Insurance (if you have employees as defined by the respective state legislation). In some cases Professional Indemnity Insurance may be required depending on the services you offer and your insurers interpretation of Professional Services. You should discuss this with your advisor.

**Q: What insurance should contractors carry?**

**A:** Each contractor is a separate legal entity and as such, is exposed to actions from third parties for injury or damage. You should make it a pre-condition of utilising a contractor that they provide evidence to you of their Public Products Liability insurance and either third party property damage or comprehensive motor Insurance. We also recommend that a contractor carry their own Personal Accident or Workers Compensation Insurance. In some cases, Professional Indemnity Insurance may be required depending on the services being provided and an insurer's interpretation of what is deemed as Professional Services. You should discuss this with your advisor.

**Q: What insurance cover is an employer responsible for?**

**A:** Each employer is required by law to carry Workers Compensation Insurance on their employees and can be vicariously liable for injuries to contractors who may be engaged to perform work on their behalf. Employers should look to purchase Workers Compensation (where they have employees as defined by state legislation), Public Products Liability and Third Party Damage or Comprehensive Motor Insurance at a minimum. There may be cases where Professional Indemnity Insurance is required depending on the services being provided and an insurer's interpretation of Professional Services. You should discuss this with your advisor.

**Q: Why is it important to have a coordinated claim approach following notification of a potential action?**

**A:** We think it is prudent to maintain your insurance with one insurance provider where possible, to ensure a coordinated claims approach is adopted. It is our experience that claims handling becomes increasingly difficult to coordinate if policies are spread across a range of insurance providers. It can sometimes be difficult to determine which insurance policy would respond to a particular matter until all factors are considered such as: the type of the loss (personal injury or property damage), the circumstances of the incident and the interpretation of the respective policies. This may require notification to your CTP, Motor Vehicle, Public

Products Liability or even Professional Indemnity insurers and subsequent coordination of claims handling until indemnity is granted by the appropriate policy. The early stages of claims handling is very important where multiple policies are or could be involved. Please note that we cannot become directly involved in claims handling of your CTP insurance.

### **The solution**

As we have highlighted, there are sometimes difficulties determining which of the various liability policies would respond to some of the claim scenarios provided earlier. We recommend road pilots consolidate their liability insurance program as much as possible to ensure a coordinated approach is taken to claims handling and notification. A number of insurers will not offer the full suite of legal liability products required by a road pilot, however, a common sense approach should be adopted and consolidation should be the preferred outcome, where possible.

In response to some of these issues, we have agreed a Public Products Liability policy for road pilots with some clear understandings between ourselves and the insurer of the intention of the policy and its application in the event of a claim notification. We needed to engage an insurer who understands the business of road pilots and the complexities and the possible conflict between the various policies that might respond in the event of a potential claim. Agreement was made with our Public Products Liability insurer that the Professional Liability Exclusion that forms part of all Public Products Liability policies would not be applied to road pilot services. The exception to this is where you provide consulting services for such things as; route planning, license procurement or general advice as a fee for service arrangement. In these circumstances a separate Professional Liability cover would be required.

In addition, we have arranged a Motor Vehicle policy to cover the risk of third party property damage or comprehensive protection depending on the road pilots requirements. Again we have engaged in discussions to explain the complexities and needs of road pilot's to ensure a coordinated approach is taken during claims handling so as not to compromise the road pilots position.

We see the initial claim notification and communication process as an integral part of any claims administration, particularly whilst investigation and determinations can be made on the appropriate policy response. We see this as a valuable solution for road pilots to minimise any disconnect between the various insurers who may place a collective role in your defence of a potential liability claim.

### **General Advice Warning**

This advice is of a general nature only and has not been provided with knowledge of your own particular circumstances or needs. Should you require advice which is tailored to our own needs please contact us. Please refer to our Financial Service Guide for more information about our services.