Club vs. Pro liability + some tips

The DAN Diving Insurance products are niche market products, offering tailor made insurance packages, designed for recreational and professional divers, diving instructors, dive schools or clubs. A wide range of packages and plans are available to suit the specific needs and requirements of the different diving-related activities.

Insurance should not be purchased blindly and the following questions should be asked:

- Which policy is suitable for me?
- What is covered with my policy?
- Do I enjoy cover in a policy where I am not the policyholder?
- Which insurance policy is triggered if an incident occurs?

Certainly the answer needs to be adapted to your personal needs & requirements. DAN Europe Insurance Brokers Ltd, as part of the DAN Europe Group will be pleased to provide you with answers. When it comes to assessing which policy one needs, the answer for the sport diver is simple. However, the choice becomes a bit more difficult when it comes to Professional Liability for instructors/guides and their Clubs / Dive Centres.

Naturally, the dive club should have a third party and professional liability cover, under its own name1 which indemnifies it against all sums the dive club might become civilly or legally liable, as a result of accidental bodily injury or damage to property occurring whilst providing its service of a dive club in the country of operation.

Who are `third parties'? At large and in the diving related context, the term 'third party' refers to individuals attending courses, scuba divers who are involved in technical-scientific activity, club members, clients of insured diving centres and members of the general public. Employees of a dive club/centre are not considered as 'third parties'.

Does a dive centre or club need to have its own insurance if all its instructors / guides are individually insured for their liabilities? Here one needs to think first of all in terms of whether the club/centre could still be sued by a third party, apart from having the instructor sued. It is likely that a third party would sue all those involved and normally a club could be viewed to have a higher duty of care towards its clients/members. Furthermore it is normally expected that an employer remains legally responsible for the actions of his employees, naturally whilst these are carrying out work-related activities. In any case, it would be expected that the insurance policy of the instructor / guide would only cover the liabilities of the instructor / guide alone, and not those of his principal as well. Also there could be activities, such as the organization of dive courses, whereby there could be a liability of a dive centre/club, without any negligent act from an instructor. The policy of an instructor would not cover such "club/centre" liabilities, even if the organizer himself was an instructor as well.

Does a professional instructor / guide need to purchase his personal Professional & third Party Liability coverage if the dive club/centre he works already has liability insurance? It is surely not only the dive club which can be sued as the legal entity. The professional diving instructor or guide can also become legally liable in his activities carried out for the dive club/centre. Furthermore there could be instances where the instructors' / guides' activities are not carried out solely for the dive club/centre, for example if an instructor freelances, or if he takes a friend out for a lesson/dive. However, such activities not connected to the dive club/centre would not be covered by the insurance of the dive club/centre. Also

a dive club/ centre might have not renewed their old insurance coverage, or they might have breached a policy condition thus nullifying the coverage. It is therefore best for the professional diver to be in control of his own faith, and have his personal professional policy.

Could the dive centre/club or a professional instructor / guide be still sued if their client has signed a "waiver" or "release" from liability note? If a scuba client enters into a contract with dive club XYZ, for any of the dive club activities, both the dive club XYZ and the professional dive instructor still owe a duty of care to the scuba client, irrespective of any waiver or release signed by the client. In certain jurisdictions the legal strength of such releases or waivers are questionable as in such jurisdictions such duty of care is considered to be stronger and more important than any contractual arrangements.

Example:

What happens if the cause of a diving accident was a failure in equipment?

- It is likely that the scuba client is going to sue both the club and the instructor The court will have to decide if the duty of care was breached by the dive club and/or the professional instructor or both (the club in providing defective equipment, and the instructor for failing to check the equipment provided)

As said, the scuba student can sue both the dive club XYZ, the instructor in his role as club/centre instructor and/or he can be held personally liable. Under the Club policy, the professional instructor will still benefit from liability coverage as long as the policy limit purchased by the club/centre is enough to cover the liabilities of both club/centre and the instructor (the first to be paid are the policy holders, i.e. the club/centre), and as long as the club is not in breach of any policy condition. If such a scenario were the case, then the instructor might be left exposed without any coverage at all. The Club/centre would however not be insured for its' liabilities under the instructors' personal liability policy. It is therefore important for the club and for the instructor's peace of mind to have the appropriate and proper insurance cover in place. It is also worth noting that a third party and professional liability policy for diving activities (Club Policy) is not to be confused with a generic premises/public liability and boat liability policy. The latter coverages are not automatically included and one might need to ask for them separately.

What are the first steps to follow for a dive club, professional instructor following a diving incident?

- All incidents should be notified to your broker/insurer as soon as reasonably practicable following the accident date (whether you have available documents or not, and whether you are sure or not that a claim will materialize).
- Normally the broker/insurer will request some of the following supporting documentation;
  • witness-, • medical-, • police-, • autopsy reports • receipts, contracts, medical questionnaire, waiver of liability • claim forms, dive profiles and any other supporting documentation
- In particular witness statements should be collated and signed, before any potential witnesses leave the site of the incident or the dive club (witnesses may be hard to find once they have left)
- In the absence of the insurance company's consent, please avoid any admission of liability and/or any negotiations with the authorities/third party/client since such actions could prejudice the claim. The time of an incident is not the right time to discuss responsibilities, but it is the time to handle any emergencies which might be happening at the time.
- Any documents received from the authorities/third party/ client/lawyers such as requests for compensation are to be forwarded to the broker/insurer urgently and left unanswered. Professionals will take care of answering to such requests in the appropriate manner.

- Any changes or developments related to the accident are to be submitted to the broker/insurer as soon as possible.

DAN policy type	Professional	Club
Activities covered	Professional Instructor/Guide	Professional Instructor/Guide Club Official Club Activity Committee Member