



Insurance for athletes

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I. Introduction

1. The practice of sport creates risks, both for the person who practises it and for those around him. Certain legal experts consider that sportsmen taking part in competitions accept these risks and tacitly exonerate their teammates or opponents from any civil and penal liability¹. Others disagree with this thesis.

In both cases, the actual occurrence of the risk can result in total ruin or at least involve a very heavy burden on the future of the victim or the person responsible.

2. In primitive societies, solidarity and mutual aid guaranteed the security of each of its members.

At a later stage, individualism and the subsequent loosening of the tribal ties gave rise to the idea of insurance², which to a certain extent replaced the idea of solidarity.

3. The first risks to be covered were those of sea transport; the earliest insurance policies date back to the 14th century and were concluded in Mediterranean ports, Italy, Spain, Portugal and France, as well as in North Sea ports. Fire insurance made its appearance in England at the end of the 17th century, as a result of the Great Fire of London in 1666. This was when Lloyds of London came to be founded.

Life assurance was started in England by an Act dated 1774. In France, both types of insurance made their appearance in the 18th century as a result of

an edict dated 3rd November 1787 which authorized the establishment of the first life assurance company.

4. The modern conception of insurance is based on several elements:

- *the premium*, or price of the transaction, paid by the insured person to the insurer;
- *the risk* or element whose occurrence will make the terms of the policy operative in favour of the insured person or the third party designated;
- *the insurance benefit* or sum to be paid by the insurer in the event of the risk occurring;
- *the compensation of the risks*, or actuarial calculation by the insurer, based on the laws of statistics, of the percentage of the chances of the risk covered occurring; by spreading the burden over a large number of subscribers each paying a small premium, it makes it possible to pay the benefit, as well as any profits for the insurer.

II. Insurances in general

5. In western countries, most insurances are taken out with specialized companies, constituted in the form of profit-making companies with registered capitals. The actuarial calculation makes it possible to work out the cost of the risks; to these the company adds its expenses and its profit.

Another possibility exists: state insurance. This system is the one used in socialist countries where the state has

to insure the welfare of its citizens: it is also the one used for national health insurance schemes (health, accident and disablement) in most countries.

This last type of insurance is often covered by mutual insurance companies. These are not established for the purpose of making profits but to enable their members to cover each other mutually and as a whole against certain risks.

The cost of the operation (the premium) is not determined once and for all; at the end of the year, the mutual insurance company can either call for additional payments if it has had to pay out more than it expected or, as is more frequently the case, give rebates by refunding any excess amounts charged. This idea of grouping a large number of individuals makes it possible to reduce the cost of insurance. In the field of sport, there is nothing to prevent its use; on the contrary, as the ideal solution would be for all athletes of a country to get together and form a group rather than see each federation or club take out a separate insurance and have to pay, in addition to the necessary cover for the risks, profits to the company's shareholders.

6. Insurances in general can be divided into different types, either according to the nature of the insurance companies or organizations (registered capital companies, mutual insurance companies) or according to the nature of the risks to be covered.

Civil liability, fire, and life insurance are the risks most frequently covered by registered capital companies.

On the other hand, the risks of accident, sickness and disablement as well as medical and pharmaceutical expenses are most frequently covered by mutual insurance companies. In many countries, mutual-type social insurance companies are run by the state or under its supervision and cover the

risks incurred by workers, at or during work, in everyday life and even when practising sport³.

In some countries, the legislator orders the risks of certain categories of sportsmen, in most cases professionals⁴, i. e. racing cyclists, boxers, etc., to be covered by compulsory and private social insurances. In certain cases, national sports federations have worked out a system of cover for their members (British and Belgian football, etc.).

III. Insurances in sport, and persons to be insured

7. In the field of sport, two types of insurance are becoming increasingly important and are worth examining:

- civil liability insurance;
- accident insurance or individual insurance (life insurance in sport is only one particular aspect of accident insurance⁵).

The risks to be covered may exist for the actual participants (sportsmen, players, athletes), for those participating to a lesser degree (managers, trainers, seconds) and for third parties (spectators).

The sportsman should be covered for damages caused to third parties, members of his team, opponents, spectators or others. He should be covered for injuries or sickness occurring during or as a result of the practice of sport, in competitions or while training, or during the journey to and from the place where he practises his sport.

9. The club, federation or National Olympic Committee may be held liable

towards the athlete, or the third parties mentioned above.

10. The organizer of sports contests runs risks himself and exposes third parties, his agents and employees, for whom he is liable, to these risks too.

Often the organizer attempts to exempt himself by non-liability clauses. They are valid only in the contractual field; furthermore, he cannot free himself of all liability, in particular resulting from his misrepresentation or *serious* fault.

For the clause of exemption from liability to be effective, its beneficiary must prove that his contracting partner had signified his agreement concerning this provision of the contract. With his agents and employees or for those taking part in the competitions, the organizer sometimes draws up a written contract; by one of the clauses, subject to the above-mentioned terms and cases, he may get himself exempted from the consequences of a fault liable to damages.

With regard to the spectators, the inclusion of this clause of exemption from liability on the admission tickets for competitions or on the posters located at the entrances is not, in most cases, sufficient to establish cognizance on the part of the spectators and consequently their acceptance thereof. In this case, there will be no exemption.

Consequently, the organizer has every interest in covering his different responsibilities through the mechanism of an insurance.

His liability exists also on the extra-contractual level; third parties not bound to the organizer by a contract can also be victims of an injury. In this case, insurance is the only possible form of protection.

11. The sports official, sports club, sports federation, and National Olympic Committee may each incur a distinct liability⁶.

Sports instructors, trainers and coaches sign an agreement with their athletes or their pupils: directly, when the instructor is paid by the athlete; indirectly, when he is remunerated by the club, federation or NOC.

Whether he has an obligation with regard to results or an obligation with regard to means, he must under all circumstances ensure the safety and physical integrity of his pupil.

It is generally agreed in skiing or in judo that the instructor is bound only by an obligation of means. He must do everything in his power to see that no accident occurs. He can only be held responsible for consequences liable to damages if he has committed an error. In riding, the instructor is responsible for the safety of his pupil: the intention of the parties is to carry out an apprenticeship without exposing the pupil to any risk.

The pupil is obliged to take lessons instead of learning alone; the riding school master undertakes to train the pupil to become a horseman and must try to achieve this by acting cautiously and carefully.

Similarly, the gymnastics teacher must supervise and organize the exercises of his pupils and take all necessary precautions regarding equipment and premises.

If, in every case, liability exists only in instances of negligence or carelessness, it appears wise however to advise trainers and coaches to insure against their liability towards their pupils.

12. The problem of liability arises in different ways for sports facilities and equipment as well as for animals:

- liability of *proprietors* arising out of defects in the *facilities or equipment*, causing accidents;

- liability of the *keeper of an animal* that injures a third party or causes damage;
- damage caused to installations or equipment by the *user* or by a *third party*.

In mountain resorts, accidents have occurred during the use of ski-tows. The courts dealing with the cases considered that it was a question of either a transport contract or a towing contract with the personal and active cooperation of the skier in the execution of the contract. The type of contract has a direct effect on the nature and scope of the reciprocal obligations of the parties. Anyone who places grounds, premises or equipment at the disposal of a sportsman, undertakes thereby to take the necessary precautions to ensure that his installations or facilities offer no danger to the sportsman.

In swimming, the proprietor of the pool is also under obligation to keep an eye on the swimmers.

13. In most laws, the lessor is liable for any damage caused by his agents and employees. In sport, this principle has various consequences.

Agents and employees are responsible for administrative or maintenance jobs; any fault on their part involves the liability of the club, sports federation or NOC. In case of an accident at work, most legal systems provide for obligations incumbent on the employer.

In professional sport, the club, sponsor or advertising firm are to be considered as employers of the athletes in their pay.

In most cases a bond of legal subordination exists and only very few professionals can be considered as independent.

In case of accident, the employer, the one who pays the wages or remuneration of the professional sportsman, is liable for any damage caused by the latter's carelessness or fault, and for the consequences of any accidents occurring to him during the competition, training, or on the way to or return from either of these.

IV. Types of insurance and risks to be covered in sport

14. Civil liability insurance

One of the types of insurance that should be the most common in sport is the cover for civil liability⁷.

The sportsman, club, federation, National Olympic Committee, trainer, sports official, competition organizer, proprietor of facilities, equipment or animals, all run the risk of causing damage.

In case of any fault attributable to them, they will be liable and have to compensate for any injury caused thereby to third parties.

These cases of liability can be covered by taking out an insurance either with an ordinary insurance company, or with a mutual insurance society.

15. Accident insurance

At work or in ordinary life, a man may injure himself or fall ill. In both cases, he loses the possibility of working. To cover these risks and to pay the medical and pharmaceutical expenses as well as a daily allowance equivalent to a minimum wage or salary, workers and office staff have joined together and set

up mutual or “friendly” societies, which are kinds of mutual insurance companies.

Friendly societies are groups which, by means of the payments of their members, aim, in the interests of these members and their families, to exercise “an action of welfare, solidarity or ‘mutual aid’, and social protection”.

Ordinary insurance companies, without claiming the same intentions, cover this kind of risk, with “accident” or “individual” insurance policies.

As the dangers incurred by sportsmen in case of accident are not very different from those incurred by workers, the same ideas are valid in both cases.

V. Mutual sports insurance

16. In France, Italy and Spain, officials have realized the benefit to be derived by athletes from the idea of mutual insurance.

In *France*, the “Mutuelle Nationale des Sports” was established in 1925 for the purpose of “the moral, intellectual and physical development of members of the mutual society”⁸.

It covers officials and athletes belonging to affiliated sports federations. Others have however resorted to ordinary insurance companies.

The French High Commissariat for Youth and Sport has laid down imperative provisions: to be issued with a licence, sportsmen and their officials must be guaranteed, in particular with regard to their civil liability, against any total permanent disablement and in addition for compensation in the event of death.

The guarantee provided by the “Mutuelle Nationale des Sports” covers the

reimbursement of medical, surgical, pharmaceutical and hospitalization costs (limited to 90 days). It applies to tens of thousands of sportsmen, through different policies and for varying capital sums.

17. *Italy* followed a parallel course, by organizing in 1934, within its National Olympic Committee (Comitato Olimpico Nazionale Italiano), an institution known as the “Cassa Interna di Previdenza”.

In 1938, a distinct legal entity was set up to cover certain risks by means of insurances. A new status was granted to it in 1948. Apart from its legal personality, a full patrimonial autonomy was given it. At present, it is called “Sportass”, an abbreviation of the full name “Cassa di Previdenza per Assicurazione degli sportivi”.

For a minimum premium, it covers hundreds of thousands of sportsmen on a mutual basis, for all sports risks.

18. *Spain* has its “Mutualidad General Deportivo” set up on 1st January 1961.

On the initiative of the latter, thanks to contacts with the “Mutualité Sportive Nationale Française” and the Italian Sportass, an “International Mutual Society for Sport” was established, implementing the “Tripartite Convention of Reciprocal Medical Assistance”, which already numbers four million sportsmen belonging to mutual societies.

19. A number of other countries have undoubtedly created similar organizations along mutual or other lines.

In *Belgium*, a similar scheme organized by the Department of Physical Education and Sport did not come to anything.

In certain countries football has set up its own system of insurance adding, in England, a pension scheme for retired professionals.

VI. Theoretical studies

20. In spite of the interest presented by the problem, very little study has been devoted to the question of insurance for sportsmen. On several occasions however, Sportass has organized "Study days" in Italy with the backing of the National Insurance Institute⁹.

At the first International Congress on Sports Law organized in Mexico from 26th to 30th June 1968, before the Olympic Games of the 19th Olympiad, the problem of insurance had already been raised. Apart from the reflexions of Dr. Jean Maillet concerning the obligations of the government in the development of sport, we find under the general theme "Amateurismo y profesionalismo" a number of reports including that of Dr. Federico Pachini Frediani, "The system of social insurance in Italian sports organization"¹⁰.

In Brussels, the National Centre for Research into Sports Law organized a conference on the subject: "The insurance of sportsmen" in 1970¹¹.

21. Insurance is an incidental and minor question in the practice of sport. Its importance is negligible when compared to the other problems of sport, in all fields. It deserves consideration however on the part of the legal expert and sociologist.

Even though finance is always a problem in sport, the mutual society is able to provide a positive solution in the matter of insurance: with a minimum participation on the part of all, it makes it possible to come to the aid of the few unfortunate victims as fully as possible.

VII. Prospects

22. The efforts aimed at ensuring cover for sportsmen in case of accidents exist only on a national level and in very different forms. Now in all countries the same problems of liability, payment and financing arise.

Consequently, rather than at the level of national sports federations or National Olympic Committees or even Ministries of Sport, these questions should be studied and solved at international sports federation level¹².

The international federations could require national federations to make the issue of licences dependent on adherence to a compulsory insurance covering the risks of accidents and civil liability. This obligation would automatically extend to every club belonging to the federation, and all sportsmen practising this sport on a competitive level would be insured. This would moreover be an indirect means of increasing the number of members of sports clubs and federations. This role of social protection, incumbent on the international federations, could be given concrete form by the addition of a simple provision in their rules.

The International Olympic Committee could recommend this scheme to the federations it recognizes and make this suggestion to them.

23. The task of sports officials should not be limited to the arrangement of such a scheme, which represents a minimum protection afforded to the athlete. They should also consider what other assistance could be given to him, in accordance with the principles of the rules of admission to the Olympic Games and to international competitions (Article 26 of the Rules and Regulations of the International Olympic Committee).

Social assistance for sportsmen in top competitive sport could be extended to provide compensation for loss of earnings¹³.

24. It might seem ridiculous to consider “old-age insurance” or even a pension for sportsmen, the idea of sport being bound up with that of youth. Athletes in top competitive sport are entitled however to look to their future and must in fact do so.

The “normal” man starts his career after a period of study followed by a period of apprenticeship and a period of maturing. It is only when he is about 30, sometimes even 40, that he is able to exercise his profession with sufficient experience. The sportsman, on the other hand, reaches his maturity and accomplishes his best performances before he is 20 in certain sports (swimming), the most frequently however between the ages of 20 and 25. In his 30’s, his performance tends to decline and he leaves the heights of international competition.

During his sporting career, the top competitive athlete needs all the assistance he can receive in all fields, especially on the social level.

The risk of death in competition or during training, even if it occurs but rarely, must be covered both for amateurs at all levels and for professionals. This social assistance is not complete however if, when the top level sportsman comes to end his sports career, he finds himself unprepared for any other activity.

Top athletes devote a large part of their time to training, and to everything preparing them for competitive events and finally to the latter themselves¹⁴. They cannot therefore spare sufficient time for their profession or their studies. When they retire from active competitive sport, even if they have

been given all the necessary assistance during their sporting career, they may still be unprovided for and without means of existence.

It is then, when he returns to “normal” life, that the athlete needs assistance most¹⁵. The fame he enjoyed during his sporting career will be of little help in taking up a profession, if he has not been able to study or if he has not had time to prepare himself properly for practising a profession other than sport¹⁶.

Would it perhaps be a good idea then to provide a “reconversion insurance”? While practising sport full-time, the athlete has devoted himself body and soul to this activity.

Now he represents an attraction not only for the general public but also for those who, owing to his popularity and fame, wish to use him as an advertising medium. Certain firms make use of sportsmen without the latter being able (owing to the rules of admission to competitions) to be remunerated or receive compensation.

It would however be only normal for athletes to benefit from their efforts instead of the whole profit going to firms skilled at exploiting the public’s idols. Television companies pay huge sums for the right to broadcast the Olympic Games, football and boxing matches, etc.

Is it too much to imagine the establishment, preferably at the highest level and on as wide a base as possible, of a fund, of no matter what form or name, into which—under the supervision of the IOC and the International Federations—part of the proceeds from sports meetings, the royalties paid by television, and the sums paid by commercial firms which use athletes as advertising media, should compulsorily be paid, all within the limits authorized by the Olympic authorities and the Federations.

Setting up this fund would make it possible to ensure that the athlete retiring from top competitive sport would have the wherewithal to start him off on his new life, based first of all on his needs and at the same time on his contributions to the fund.

Conclusion

It is undoubtedly not so important to cover the risk of an athlete becoming incapable one day, through accident or sickness, of pursuing a normal career in *sport*; what is of vital importance to him and what must in all cases be ensured and insured is his ability to *work* without suffering from disablement. Any insurance must cover the risk of incapacity for work. After a sporting career, whether long or short, the athlete must be able to find an honourable profession ensuring a normal, if not comfortable, existence for himself and his family.

The "athletes fund" could cover another need: it could provide compensation for what in sport might be considered as loss of time in the search for a job. Top athletes would be able to draw from this fund a small capital enabling them to receive later than others the education they were unable to complete, or to compensate them for a number of years for the fact that they will be earning less than other men of their age, owing to their lack of experience in their profession or trade.

Any assistance that a sportsman might receive from health, disablement and accident insurance, as well as from a civil liability insurance, can be completed either by setting up a reconversion fund or by organizing a system of social assistance which would play the same role in sport as that played by a retirement pension in work in general.

¹ In civil law: Mazeaud and Tunc, Responsabilité civile, No. 523 - 2; Jean Loup, Les sports et le droit, Dalloz, 1930; De Page, Traité élémentaire de droit civil, Vol. 2, No. 1 045; Répertoire pratique de droit belge, V Responsabilité No. 455; Dalcq, Responsabilité civile, No. 530 et seq. In penal law: P. Garraud, Les sports et le droit pénal, Rev. int. droit pénal, Paris 1924, p. 213; R. Charles, Le sport et le droit pénal, Revue droit pénal et crim. 1952-53, p. 852; Joao Correia Boaventura, Direito Desportivo, subsidios para um codigo penal desportivo, Lisbon 1958.

² Hamon, Histoire générale de l'assurance en France et à l'étranger, Paris 1897.

³ Luc Silance, Droit social et sport, Journal des Tribunaux du Travail, 30th November 1972, p. 273

⁴ Belgian law dated 7th November 1969 concerning the application of the national health scheme to holders of a professional racing cyclist's licence.

⁵ Hugueney, Homicide by imprudence in the exercise of a violent sport, Rev. SC. criminelle et droit pénal comparé, 1938, p. 712.

⁶ Pache, La responsabilité civile en matière de sports, Lausanne 1951.

⁷ Les Nouvelles, Droit commercial, Vol. 5, Les Assurances, Larcier, Brussels 1966.

⁸ "Le sportif mutualiste", revue de documentation et de mutualité sportives, Paris.

⁹ Reports of the "Sport and Insurance" day on April 18th 1969.

¹⁰ Reports of the First International Congress on Sports Law, Mexico, 1968; see also:

— Dr. Giuliano Mazzoni, "Le travail et le sport", "L'amateur et le professionnel";
— Dr. Mariano R. Tissebaum, "La proteccion juridica del desportisto profesional".

¹¹ Wasterlain and Scheuer, L'assurance des sportifs, Brussels ADEPS 1970 (Report to the "Centre National de Recherches de droit du sport").

¹² Jean Meynaud, Sport et politique, Paris 1968; Etudes et documents, Payot; MacIntosh, Sport in society, London, Watts, 1963.

¹³ Monique Berlioux, Olympica, Paris, Flammarion 1964; G. Meyer, Le Phénomène Olympique, Paris, La Table Ronde, 1960; Alexandre Siperco, L'athlète olympique, International Olympic Academy, 10th session, 1970, p. 118; Roger De Groot, Les Jeux, Stock, Paris 1972; Luc Silance, Le Statut social du sportif, Journal des Tribunaux, 1st-8th April 1972, p. 237; Amateurism, Reports of the 1st International Congress on Sports Law (Mexico 1968); International Sport and Social Law, Olympic Review, February 1973.

¹⁴ Michel Bouet, Les motivations des sportifs. Editions Universitaires 1969. p. 139: ditto. De la fonction socio-économique du sport, Economie et Humanisme, March 1968.

¹⁵ F. Lotz, Réflexion sur la mise en valeur et le développement du sport de haute performance et de l'entraînement, International Olympic Academy, 11th session, 1971, p. 272.

¹⁶ Michel Bouet, Signification du sport, Editions Universitaires, Paris 1966, p. 585 et seq.; Sport et développement social au 20e siècle. Paris Colloquy November 1968 (Editions Universitaires); Georges Magnane, Sociologie du sport, Idées. N R F, Paris 1964.