

# Liability Insurance for Charitable Organizations

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The following, in point form, is a brief overview of the areas which must be considered when you are arranging an insurance program for your organization. It can also be used to check the adequacy of your existing program. It is, however, merely an outline and you should consult your broker to make sure that your present or planned insurance program is sufficient for your needs.

This outline will deal with liability insurance, including accident insurance. For a complete program you may also need other policies such as property, crime and pressure-objects insurance.

In the outline we shall consider some “do’s and don’t’s” for:

- (a) Comprehensive General Liability
- (b) Automobile
- (c) Directors’ and Officers’ Liability
- (d) Errors and Omissions Insurance
- (e) Umbrella Liability
- (f) Individual Personal Accident Insurance

## **(a) Comprehensive General Liability (C.G.L.)**

This insurance covers you against damages and defence costs for liability imposed by law arising out of bodily injury to others and property damage resulting in claims by others.

A basic “off-the-shelf” policy will have many restrictions and exclusions which should be amended. Ask for the following endorsements:

- (1) Non-Owned Auto—you can be sued for accidents arising out of the use of automobiles not owned by you, e.g., employees or volunteers may be acting on your behalf at the time of an accident involving their personal cars.
- (2) Blanket Contractual—you may assume the liability of others under contracts. A basic policy will not always cover this contingency.
- (3) Employer’s Liability and Contingent Employer’s Liability—whether or not your employees are covered under Workmen’s Compensation you should always ask for both of these endorsements.
- (4) Occurrence Property Damage—broadens the meaning of the word “accident”.
- (5) Personal Injury—covers libel, slander, false arrest, etc. Request that the

- injury-to-employee exclusion be deleted. Ask for discrimination coverage.
- (6) Qualified Intentional Acts Exclusion Insurance—acts for the purpose of protecting persons or property should be covered.
  - (7) Delete the professional exclusion.
  - (8) Include punitive damages, particularly if you have any exposure in the United States.
  - (9) Cross Liability—allows one insured to sue another and claim under the same policy.
  - (10) Include employees and volunteers as additional insured categories. Delete the normal exclusions under the endorsement, e.g., a normal endorsement excludes injury to employees.
  - (11) Discuss the following endorsements with your broker:
    - (i) Broad Form Property Damage
    - (ii) Non-Owned Aircraft (aircraft you own should be covered by an Aviation Policy)
    - (iii) Watercraft Coverage (owned and non-owned)
    - (iv) Worldwide Coverage
    - (v) 60 Days Cancellation Clause
    - (vi) Voluntary Compensation
    - (vii) Legal Liability for Damage to Hired Autos
    - (viii) Tenant's Legal Liability
    - (ix) Forest Fire and Fire-Fighting Expenses
    - (x) Medical Payments
    - (xi) Employee Benefits Errors and Omissions
    - (xii) Garage Liability.
  - (12) Legal Liability—to protect you should participants in your fund-raising events (e.g., marathons) be injured. Don't accept an endorsement deleting the coverage unless it is of the "participant to participant" variety.
  - (13) Limit of Liability—\$5,000,000 should be an absolute minimum. Remember, an accident involving legal liability which is covered under a policy issued this year might not be adjudicated for another six or seven years and court settlements are escalating.

## **(b) Automobile**

High levels should be carried.

### **Non-Owned Automobile**

Standard automobile insurance covers the owner and any person driving with the

owner's permission. It does not afford coverage for any organization on whose behalf the automobile is being driven.

Endorsements to the basic automobile coverage which will sometimes be required:

- (1) Permission to rent or lease
- (2) Loss-of-use coverage
- (3) Passengers for hire
- (4) Garage and Dealer's Forms (if you are involved in the care and custody of autos).

### **(c) Directors' and Officers' Liability**

This form of insurance covers directors and officers of organizations for any breach of duty or wrongful act which results in a claim against them. It also covers the organization's responsibility to reimburse directors and officers for their liabilities. Defence costs are also covered. In profit-making organizations stockholders are the most common source of claims, however, claims also occur from:

- (1) Employees

Claims can arise from charges of discrimination, wrongful dismissal and non-payment of wages for which directors are personally responsible. (This coverage is not readily available in the open market.)

- (2) Government Body or Agency

Through expenditure of grants for purposes other than those intended. (A fidelity bond covers these claims.)

- (3) Various other categories such as doctors, creditors, activist groups, customers, patients, clients, etc. Some of the types of allegations are as follows:

- (i) collusion and conspiracy to defraud
- (ii) improper expenditures
- (iii) conflict of interest
- (iv) failure to honour employment contracts
- (v) interference with contractual rights
- (vi) inadequate supervision
- (vii) inadequately meeting the needs of clients.

Claims against directors and officers of non-profit organizations are much less frequent in Canada than in the United States, however they are expected to increase as public awareness of the right to sue increases. Even if no award is made, the court costs can be substantial.

The need for increased coverage should be seen as a sign that your organization is healthy. It has been wisely said that, "if a board needs insurance that is a healthy sign that it is actually doing something".

The following points should be kept in mind when you are considering Directors' and Officers' Liability Insurance:

- (1) Standard policies have an exclusion relating to directors' and officers' failure to arrange proper insurance, e.g., setting the limits of the organization's property and liability insurance too low. If the organization suffers because of its inability to replace property or satisfy damages, directors and officers might be held personally liable. In turn, the organization might have to indemnify the directors and officers.
- (2) Fiduciary liability (bonding) for the management of pension trust funds can be covered if requested.
- (3) Incidental professional liability for any of the directors and officers who are also professionals, e.g., accountants and lawyers, can also be covered.
- (4) Ask for quotes for various limits of liability. Buy as much as you can afford.

**(d) Errors and Omissions Insurance**

This type of insurance goes further than C.G.L. since it is not limited to bodily injury or property damage. It covers an insured against suits for financial injury to third parties not normally covered under a C.G.L. If you are involved in giving advice to the public, this type of insurance should be considered since traditional immunities appear to be gradually disappearing.

**(e) Umbrella Liability**

Rather than buying a \$5,000,000 limit of both Comprehensive General Liability Insurance and Automobile Insurance it sometimes costs less to buy basic limits by purchase of a single policy called an "umbrella". Coverage provided under an "umbrella" is often wider than that provided under the C.G.L. in which case the "umbrella" can sometimes act as primary insurance, subject sometimes to a self-retained limit.

**(f) Individual Personal Accident Insurance**

It is relatively inexpensive to cover directors, officers, employees, or volunteers for accidental death and dismemberment. Get quotes for different limits and also on different bases, e.g., 24-hour protection for full-time people and work protection for others, or work-related cover only for all. A more restricted form could cover travel activities only.

No overview can possibly cover all individual requirements. Nevertheless this check list should provide a good basis for further consultation with your broker.