Deciphering the Hieroglyphics of Museum Insurance

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Lunch with NEMA
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Presentation Agenda

• Protecting Your Volunteers
• Liquor Liability
• Sexual Abuse and Molestation
• Affordable Care Act
• Directors & Officers
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Protecting Your Volunteers

• In some cases, minor injuries to volunteers can be covered under the “Medical Payments” section of a GL policy.
  • This is a no-fault coverage that will allow an organization to pay the medical bills of a visitor who gets hurt on your premises.
• However, some policies affirmatively exclude volunteers from receiving Medical Payments if there is an accident.
Protecting Your Volunteers

• Claims scenario – an older volunteer was doing some light landscaping for a historic home and tripped over a root while in the garden.

• Injury – the volunteer ended up needing a hip replacement due to the injury.

• Result – the museum had a volunteer exclusion on the GL policy and it morphed into a lawsuit over who should pay the medical bills.
Protecting Your Volunteers

• Remember – your board members are considered volunteers as well!
• Workers compensation does NOT cover volunteers.
• If you have a volunteer exclusion, consider purchasing a volunteer A&S policy –
  • Provides no-fault coverage for injuries incurred during a sponsored activity.
  • Can be first dollar coverage or act as excess to the volunteer’s health care.
  • Can add weekly indemnity to replace lost wages.
  • Typically inexpensive and easy to procure.
Liquor Liability

- Most policies offer “host liquor” liability coverage for those organizations that aren’t in the business of furnishing alcohol.
- Host liquor can cover nominal exposures like serving wine during an employee holiday party or during a board meeting.
- More and more policies are affirmatively excluding host liquor if they see the organization hosting events with alcohol - underwriters DO look on your Facebook pages!
Liquor Liability

• Read your exclusions!

• **Bottom Line: Review your policy and check governing state statutes.**

• If there is any doubt, transfer the risk to a hotel, restaurant, caterer, or professional bartender. If you frequently hold events with liquor and don’t want to transfer the risk to a third party, you will want your own LL policy.

  • How much does it cost? It will depend. A LL policy typically rates off of expected receipts for the year.
Sexual Abuse and Molestation

- This protects your organization against claims alleging abuse and molestation and provides legal defense costs and settlements.
- Good to have if you host a summer/vacation camp, classes for children, or frequently have situations where your employees or volunteers are alone with children or other vulnerable populations.
- Verify scope of coverage →
  - Are volunteers considered insureds under the policy definition?
  - Are defense costs inside or outside the limits?
  - Does your umbrella policy sit over SA&M if you have the coverage?
Sexual Abuse and Molestation

- Even groundless claims are tens of thousands of dollars to defend.
- Settlements can range into the millions due to sympathetic juries.
- Policies are typically rated off of the number of campers/students and how many “camper days” out of the year.
- Some carriers are going to want to see thorough procedures and policies in place before quoting a policy or agreeing to add it to an existing GL policy.
- The website [Nonprofit Risk Management Center](#) has some helpful resources.
Sexual Abuse and Molestation

• What policies can cover varies, but most include:
  • damages due to bodily injury arising from physical abuse
  • sexual misconduct
  • sexual molestation
• BI can include sickness or disease sustained by a person.
• BI could also include mental anguish, mental injury, shock, fright or death resulting from physical injury.
• Enhancements to consider – Innocent Party Defense coverage for employees, volunteers; image/PR restoration.
The Affordable Care Act

Legal Compliance

• There are countless rules and regulations governing employee benefit plans. In order to help keep you up-to-date and compliant with workplace laws, various resources are available:
  • Legislative bulletins, legislative briefs & newsletters
  • Education on plan design
  • Step-by-step breakdowns and guidance for dozens of state and federal benefits laws
  • A full suite of reference material detailing the Affordable Care Act
  • Health Care Reform Calculators
The Affordable Care Act

Legal Compliance

Many of your compliance requirements are already met through the existing notices and documentation issued by your various carriers, TPAs, and other vendors. Four that are not include:

- Initial/General COBRA Notice
- Notice of Healthcare Exchange
- Medicare Part D Creditable Coverage Notices
- Summary Plan Description (SPD)
The Affordable Care Act

Initial/General COBRA Notice

Notice describing rights under COBRA must be given to each employee and spouse of an employee within the first 90 days of coverage.

Notice of Healthcare Exchange

In addition to notifying all existing employees on 10/01/13, notification must be made to all new hired within 14 days of their start date.
The Affordable Care Act

Medicare Part D Creditable Coverage Notice

• Part-D-eligible individuals must be furnished with a notice disclosing the creditable or non-creditable status of their coverage before the beginning of the Medicare Part D annual enrollment period [generally by Oct. 15] and at certain other times.

• Employers must disclose to CMS, on an annual basis and at certain other times, whether the coverage they provide is creditable or non-creditable.

• The deadline for disclosure to CMS by calendar year plans is March 1.
Summary Plan Description (SPD)

- The SPD is the main vehicle for communicating plan rights and obligations to participants and beneficiaries.
- It is a summary of the material provisions of the plan document, and it should be understandable to the average participant of the employer.
- In the context of health & welfare benefit plans, it is not uncommon for the SPD to be a combination of a complete description of the plan's terms and conditions, such as a Certificate of Coverage, and the required ERISA disclosure language.
- **Note:** An insurance company's Master Contract, Certificate of Coverage, or Summary of Benefits is **not** a plan document or SPD.
The Affordable Care Act Education

There are many resources available that will make short work of health care reform compliance –

- Health Care Reform: 2015 Compliance Checklist
- Health Care Reform Timeline
- Health Care Reform Toolkit
Directors & Officers/Employment Practices Liability

- D&O coverage comes in two parts –
  - Directors & Officers coverage, which protects the organization’s Board of Directors against allegations of fraud or fiduciary mismanagement (think Enron).
  - Employment Practices Liability (EPL) coverage, which comes into play when there are allegations of discrimination or civil rights violations against the organization, its employees, and its volunteers.
Directors & Officers/Employment Practices Liability

- EPL claims are prevalent in non-profit organizations, particularly if the organization works with a vulnerable population.
- Claims scenarios:
  - A former employee who was terminated alleges racial discrimination as the cause of their firing, despite the fact that the termination was due to well-documented poor job performance.
  - A disabled patron sues under the Americans With Disabilities Act for a lack of wheelchair ramps at a facility.
Some things to look out for in a non-profit D&O/EPL policy:
- Are defense costs inside or outside the limits?
- Are third party suits excluded?
- Is there a sublimit for Wage & Hour claims? Are they excluded entirely?
- Look for a broad definition of who is an insured – should cover ALL directors, officers, employees, volunteers, and committee members.
- Full prior acts coverage – a policy with no “retro date” that would limit coverage for prior wrongful acts.

**Bottom line** – Don’t rely too heavily on the immunities and limitations provided by state laws. Eventually, a statutory defense may prevail but in the meantime, the organization can run up substantial legal bills.
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Contact our museum team now:
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