

DIRECTORS AND OFFICERS LIABILITY INSURANCE

Your Kiwanis club may be exposed to lawsuits that could impact its ability to provide needed community service. Nobody expects to be involved in a lawsuit. But insurance is designed to protect against the unforeseen. In the U.S. and Canada, directors and officers liability insurance helps protect Kiwanis clubs, districts and members against such claims—so Kiwanians can concentrate on service and fellowship.

Kiwanis International's D&O Liability Insurance coverage for all clubs in the U.S. and Canada became effective November 1, 2015.

WHY COVERAGE MATTERS

D&O liability insurance protects the club, district and members against the costs of lawsuits. Just a few of the potential claims covered are employment practices liability (including accusations of discrimination, sexual harassment and wrongful termination), allegations of mismanagement of funds, failure to enforce bylaws and violation of state/provincial and federal laws.

D&O liability insurance protects the club or district entity as well as directors and officers. It also includes committee chairs, other club members and even volunteers and employees. Thanks to the broad coverage, financial protection is extended to SLP clubs as well.

WHAT IS DIRECTORS AND OFFICERS LIABILITY INSURANCE?

It is coverage that:

- Provides protection for directors, officers, committee chairpersons, members and volunteers for liability arising out of the performance of their duties
- Protects the personal assets of individuals
- Protects club assets
- Provides a duty to defend
- Provides coverage for all members, not just board members

CLAIM EXAMPLES

Employment practices claim

An elderly member was asked to stop driving for a club's meals on wheels service. It had been observed that his driving skills had materially diminished after a recent illness. The member claimed age discrimination and petitioned a court to be reinstated as a volunteer driver. The average claim size for a discrimination suit is approximately \$250,000.

POLICY HIGHLIGHTS (includes employment practices)

- Broad definition of insureds, including coverage for directors and officers, employees, trustees and volunteers
- Custom insured vs. insured language
- Severability of Exclusions language
- Non-Rescindable A-Side coverage
- No intentional acts exclusion/limitation until final adjudication
- Non-rescindable coverage for individual directors and officers
- If one party must be excluded from a claim, other parties retain coverage.

WHAT IS EMPLOYMENT PRACTICES LIABILITY INSURANCE?

- It protects against potential damages for events involving, wrongful dismissal, harassment, discrimination, defamation and unfair hiring/firing practices (including volunteers).
- It provides defense costs associated with responding to related lawsuits.

D&O CLAIM REPORTING

All potential claims must be reported to the carrier as soon as possible. It is not necessary to wait for a lawsuit to be filed—there is no penalty for reporting potential claims. However, if you are aware of legal action taking place, the carrier must know immediately. Quick action can reduce claims cost.

Report claims to:

MAIL Hylant
ATTN: Claims Department
10401 North Meridian Street
Suite 200
Indianapolis, IN 46290

PHONE 1-800-678-0361, ext. 15153 or +1-317-817-5153

FAX +1-317-817-5151 (fax)

D&O claims

On their websites, banners, newspaper advertisements and fliers, a Kiwanis club includes the logos of many organizations and sponsors of the event. A large group of volunteers came from one particular employer, so the employer's logo was included in appreciation. The employer sued the club for an injunction and monetary relief for alleged misuse of trademarked property and violation of intellectual property rights. Similar claims have accrued settlement and defense costs of over \$400,000.

(See Typical Questions and Answers for D&O on page 32.)

INCLUDE THE FOLLOWING INFORMATION:

- Your name
- Your club/district and your club key number, if applicable
- Your phone number
- Your email
- Date you became aware of the potential claim
- Details of the potential claim, including dates and persons involved
- Contact information of a third-party law firm, if one is involved
- Any documents, such as a letter from an attorney or a formal charge

D&O LOSS PREVENTION

The key to effective loss prevention with the Directors and Officers Liability program can be summed up with a few basic principles:

- Consistency
- Transparency
- Reasonableness
- Fairness

A robust loss prevention program is essential to the Kiwanis family of clubs, districts, foundations and SLPs. Failing to protect the integrity of our mission might be costly.

AN EFFECTIVE LOSS PREVENTION PROGRAM WILL:

- Protect the name and integrity of your club in the community.
- Aid in minimizing the cost of any losses that may occur.
- Promote the retention of strong leaders in our organization.
- Help attract potential Kiwanis members, officers and volunteers.

DUTIES

According to a study on loss prevention, there are three basic duties that directors and officers are subject to:

Duty of diligence

Duties of officers must be performed in good faith. Officers must act in the same manner as a reasonably prudent person would in their position.

Duty of loyalty

The interest of the organization is above that of any one individual. Decisions should be made in the best interest of the organization. Decisions that profit an individual are not in the best interest of the organization. Any conflict or appearance of conflict between an individual and the organization must be avoided or resolved.

Duty of obedience

Directors and officers must act within the scope of the club or district bylaws, as well as jurisdictional laws.

A few practical steps should be considered within the club/district/foundation boards:

Get educated! As new officers join the board, participate in the training offered by the district or Kiwanis International. It is important to understand not only the position, but the bylaws as well.

Encourage board meeting attendance. Having good attendance improves communication, develops strong consensus, and will go a long way to avoid conflict.

Document! Minutes from the board meeting should be produced on a regular basis and distributed accordingly.

Avoid conflict of interest. In a situation where there may be a conflict of interest between the board's decision and any individual board member, that board member should step aside from that discussion and from the vote. Even better, avoid decisions that may benefit any member or member's interests.

Provide consistency. By the very nature of our clubs, there is likely to be turnover in membership from year to year. Make sure meeting notes and records are transferred to the new boards.

Be inclusive. Avoid controversial or offensive topics. Use the "reasonable person" standard for decisions. Involve as many people as possible in all decisions.

Resources and additional loss-control tips will be made available to you in the coming months.

TYPICAL QUESTIONS AND ANSWERS ABOUT DIRECTORS & OFFICERS INSURANCE

1. Are districts and club foundations covered under this program?

Directors and officers coverage applies to subsidiaries of clubs and districts. SLP entities of clubs and districts are also covered.

2. How does our club or district enroll for this coverage?

No action is necessary. Your club is automatically covered.

3. Will certificates of insurance be available for this coverage?

Certificates of insurance do not apply to D&O coverage as it is for the benefit of the club. The coverage would not extend to third parties, so proof of insurance is not necessary.

4. Who within our club or district is covered by D&O insurance?

Executives (including directors, officers, and committee members), employees, and volunteers (including members) of clubs and districts who are acting within their capacity of the Kiwanis entity.

5. Are nonmember volunteers covered as well?

Yes, non-member volunteers are covered while acting in their capacity with a Kiwanis entity.

6. Our club previously had D&O insurance through a local agent. Can we continue that coverage?

Your club may continue its previous policy. However, this coverage was intended to replace all other D&O policies. If your club continues with its previous policy, that policy would be primary for any claim. The new Kiwanis program is a “group” program and the club is automatically covered, so there is no opt-out. If your club chooses to keep its previous coverage, you should consult the “other insurance clause” of your policy.

7. Many of our members sit on boards of other not-for-profit organizations. Will the Kiwanis D&O policy protect those individuals while serving on other boards?

Yes, coverage in excess of what is provided by the other non profit is available for members while serving on the board of another 501(c)(3) organization with the knowledge and consent of or at the request of Kiwanis.

8. Is sexual harassment covered under the D&O policy?

Claims for sexual harassment are covered under the Employment Practices portion of the Directors and Officers Liability policy. (Allegations of sexual abuse and molestation are covered under the General Liability policy. See Typical Questions and Answers for General Liability p. 4, question 16.)

9. How do we pay the premium for D&O coverage?

Kiwanis International pays the premium with insurance program fees collected through the annual billing. Districts make a specific contribution to the cost.

10. Is there a deductible for this coverage?

There is no club or district deductible. Kiwanis International funds a US\$50,000 deductible/retention per claim for this coverage. If Kiwanis International and the insurer recommend settling a claim and the local club or district refuses to settle, the additional claim costs will be the responsibility of the local club or district.

11. How do we report a claim?

Claims should be reported to Hylant, the Kiwanis International insurance broker, at 1-800-678-0361, ext. 15153. All potential claims must be reported to the carrier as soon as possible. This policy has a duty to defend the club and legal counsel will be assigned by the carrier.

