Non-Profit Insurance FAQ’s

Q. What exactly does General or Public Liability Insurance cover?
A. General or Public Liability covers ONLY if you are alleged to have caused bodily injury to a 3rd party and/or damaged a 3rd party’s property. It covers any legal expenses incurred to defend you and any judgment rendered against you, up to your policy limits. It also can cover allegations of ‘personal injury’ which is coverage for wrongful arrest, advertising injury and some limited libel & slander.

Q. If we have our residency participants sign a waiver or hold harmless agreement, are we protected?
A. Yes, somewhat but not 100%. Waivers are a good tool to help you defend accusations that the injured party was not aware of the risks. However, it should not be interpreted that all waivers are watertight and that you cannot be found negligent. People can try to say you were negligent for anything even if you were not. Liability insurance will defend you in that scenario.

Q. Can we be held responsible for any artist’s injuries even if it is proven we were not negligent?
A. Yes. The outcome depends on a lot of factors but you could be held partially negligent.

Q. Do we have any liability for an artist’s family members if they get injured?
A. Yes. Depending on the situation, you could be held liable. However, as they are not employees, your general liability policy would respond.

Q. If an artist’s personal effects, artwork or materials are stolen, where are we covered?
A. It depends whether your property policy will respond or not. If the artist brings a suit claiming you did not adequately protect their property, your general liability might respond. It is best to state clearly that you are not responsible for whatever reason for any personal property in your contract-waiver agreement.

Q. Artists often go ‘off campus’ – into town to restaurants/bars, are we liable if they get injured?
A. Your organization can be held liable for any multitude of situations. It is not black and white. It all depends what kind of supervision or guidance you offered and was the situation adequately addressed in the contract-waiver agreement.

Q. If we let artists use equipment/power tools, are we liable for injuries?
A. You could be. It all depends on the situation whether you provided adequate training, supervision, waivers, maintain safety standards, etc…

Q. If we let participants drive our organization owned vehicles, whose insurance applies the driver’s or ours?
A. Insurance follows the car, not the driver. Your organization’s auto insurance protects your institution but it does not necessarily protect the driver. It is your responsibility to get a copy of each driver’s valid driver’s license before letting others drive company cars.

Q. How do I know if my agent is offering the lowest premiums available?
A. You are not necessarily looking for the lowest premiums. You want coverage to be broad not just inexpensive. Your agent should give you options and show you that they have approached a variety of companies for bids.

Q. If we hire volunteers/interns how are they protected if they are injured?
A. Typically workers comp policies will respond but, in addition, purchasing an ‘Accident-Medical’ policy that covers volunteers and interns is a good belt and suspenders approach.

Q. What policy protects us for claims alleging discrimination and sexual harassment?
A. The EPLI (Employment Practices Liability Policy) provides this coverage. Sometimes your D&O (Directors & Officers) policy can respond but it is best to have an EPLI policy. It is also important today to have a written “code of conduct” that is expected from everyone onsite.

Q. What exactly does our D&O policy cover? We are a nonprofit, who is going to sue us?
A. Your Director & Officers policy covers your organization for claims against the Trustees, Officers, Directors, etc… for claims alleging “mismanagement” of the institution. However, as an example, one of your major funders could bring a claim alleging their money was spent irresponsibly or not how they intended.
Q. Our policy specifically lists our location(s), what if something happens off campus?
A. On your property insurance, the locations should be specifically named/listed. For your general liability, coverage should apply ANYWHERE the claim occurs and is not restricted to only your premises. Confirm with your agent that your liability is not limited to named locations. Liability insurance should protect you on and off site – anywhere.

Q. What does ‘Additional Insured’ (AI) do?
A. When another party adds you onto their policy as an AI, you are given protection under their policy if you are brought into a claim that was caused by their negligence. An AI requirement must be spelled out in a contract in conjunction with an indemnity agreement.

Q. What exactly is ‘risk transfer’ or ‘shifting of liability’ and why are they important?
A. This term refers to a way to risk manage your institution’s risks by contractually shifting a risk to another party. It is an underlying tenant of transactions. An example would be if you let a 3rd party organization use your public space for an event. Contractually you would require them to be liable for any injury arising from their event and hold you harmless. You contractually shift the risk to them for their use of your space.

Q. Can I hire people (sub-contractors) who do not have insurance? What is my risk?
A. Yes, however, it is not advisable. Any vendor or contractor you work with should have insurance. It’s pretty standard operating procedure to carry insurance and if they do not, it is a red flag. Some sole proprietors and certain trades like photographers, independent filmmakers, or makeup artists, for example, do not carry insurance. If you hire a lot of these type of trades, and they get injured on the job it can have an effect on your workers comp premiums.

Q. How is an insurance agent paid and why isn’t that explained to me anywhere?
A. Your agent is typically paid on commission, which is 10%-20% of the premiums. You should ask your agent annually what they earn on your account and/or during renewal. You should know the fees you are paying and, in some cases, you can negotiate an agreed fee amount.

Q. Do insurance companies rate non-profits lower rates?
A. Insurance companies analyze risk. It does not matter if you are nonprofit or not. If you are taking on the same risk as a for profit company (i.e. during a construction project) the premiums are the same. Nonprofits are rated lower on their D&O insurance because you do not have shareholders who may sue if they do not make a profit.

Q. Is getting a certificate of insurance (COI) evidencing a vendor has insurance good enough?
A. Getting a COI is good proof of coverage but it is not necessarily a guarantee that you are protected under that policy. A contact should be in place that sets out the terms of the agreement, what levels of insurance need to be carried by the vendor and how your institution is to be protected (see risk transfer above).

Q. How do we protect ourselves when we or others who use our space, serve liquor?
A. Always confirm in writing that there is liquor liability insurance provided by the caterer. If you just serve wine to board members or employees, there is not a need for specific liquor liability coverage. Your general liability should include “host liquor coverage” which addresses incidental alcohol you might serve.

Q. Since insurance is a commodity, should we select the lowest cost options?
A. It is a common misperception. Some insurance is a commodity but most is not. Selecting the lowest premium is not a good way to adequately buy insurance to protect your institution.

Q. How can I be assured that I am covered for any situation?
A. If you are not sitting down with your agent/broker every year and discussing your operations and what you perceive as your risks, you are not adequately protected. We recommend that you meet with your agent each year and do a thorough review of all your exposures and risks. If you tell your agent all about your operations its their job to inform you what risks are covered vs not covered.
Misconceptions about Insurance

- Umbrella insurance covers everything.
  *Incorrect: It only covers allegations of bodily and/or property damage.*

- Insurance covers all your claims and risk.
  *Incorrect: Many risks are not covered by insurance or are not insurable.*

- With automobile insurance, you should “pick your own limits”, like Geico/Progressive ads suggest.
  *Incorrect. How would you know how much insurance you need? Talk to your broker/agent.*

- When you use your personal car for a business trip, if you get in an accident, it is covered under your company’s automobile insurance.
  *Incorrect. It falls under your personal Auto insurance NOT your companies.*

- If your personal items (handbag, laptop, etc) are stolen on a business trip, you are covered by your company’s insurance.
  *Incorrect: These claims falls under your personal insurance, not your companies.*

- Getting a Certificate of Insurance (COI) from a vendor or sub-contractor is a guarantee you are protected.
  *Incorrect: There needs to be a separate contract in place that makes the certificate effective. Without a contract, you aren’t protected despite getting a certificate!*

- Buying the cheapest insurance is the best way to protect your institution.
  *Incorrect: Cheap isn’t a determination of the quality. As with many things, you get what you pay for.*

- If you have your artist sign a hold harmless agreement, they cannot sue you.
  *Incorrect: Anyone can sue anyone else for anything. A hold harmless or waiver of liability just makes your case stronger.*

- If a vendor or sub-contractor does NOT carry insurance, you should NOT hire them.
  *Incorrect: You can hire people that don’t carry insurance in certain situations, but not all. If you need a certain vendor to perform a unique service and they don’t have ‘adequate’ insurance, they can still be hired as long as you have considered the risk. An example would be a photographer shooting a story about your institution.*

- Insurance is a commodity purchase; all insurance coverage is essentially the same.
  *Incorrect: Personal automobile or apartment insurance may be a commodity purchase- all polices are essentially the same. Insurance for your institution needs to be ‘custom’ as each of your operations and risks vary.*

- Insurance company always look for ways to deny claims or pay as little as they can.
  *Incorrect. If insurance companies didn’t pay the correct amount, they would be put out of business. They all pay claims. However, companies don’t necessarily pay the exact amount you or the plaintiffs want. They do negotiate and do not irresponsibility just write checks without investigation!* 

- You don’t need a broker/agent. You can negotiate your insurance coverage yourself.
  *Incorrect: Maybe with your personal auto or apartment insurance you don’t need advice but for businesses of any kind, you should bring in experts that can help advise you.*

- An agent and a broker are the same. The functions are interchangeable.
  *Incorrect: An agent is an agent of, and works for the insurance company. A broker works exclusively for you and has no allegiance to an insurance company.*