

RISK MANAGEMENT TECHNIQUES



GENERAL

The purchase of commercial insurance is frequently the first choice as a method for providing financial protection against accidental losses. However, there are a number of alternative methods of protection which can also be used to protect your local club, Kiwanis International, and your Comprehensive General Liability Insurance Program from unnecessary lawsuits. The following paragraphs outline several of these alternative methods, each of which is available to Kiwanis International and its member clubs. The guiding principle behind all of these alternatives is the transfer of exposure to loss and/or payment of loss from Kiwanis International and the local club to others, whether they are facility or service providers (property owners, contractors, subcontractors, promoters, performers) or participants.

Standard Contract:

Local clubs frequently use facility and service providers in the course of fundraising and service activities. Such situations can present a substantial exposure to loss. The guiding principle here should be the transfer of loss exposure to the provider of the facilities or the person performing the activity from which the exposure arises. We suggest member clubs consult with a local attorney to develop a *standard contract* which requires the outside provider of facilities or services to assume all liability arising from the event. The contract or agreement should be in writing and should include the following provisions:

1. A *hold-harmless* provision whereby the operator/provider/performer agrees to hold Kiwanis International and its member clubs harmless from any and all claims for liability for bodily injury or death resulting from the event, or for damage to property of others which might arise from the event.
2. The operator/provider/performer should be required to furnish the local Kiwanis club, as the event sponsor, *prior to the event*, evidence of liability insurance to cover any claim which might arise, with a combined single limit of not less than \$1 million per occurrence bodily injury and property damage. Such evidence shall be in the form of a standard *certificate of insurance*.
3. The *certificate of insurance* issued by the operator/provider/performer should show Kiwanis International and your local club named as *additional insureds* on the General Liability insurance policy.
4. The certificate of insurance should indicate that the insurance covers all premises and operations which will be involved in the event, as well as products liability insurance for any equipment to be furnished or any food products or services sold by the operator during the event.
5. Finally, be certain that the certificate indicates *30 days prior written notice* of cancellation or material change in the insurance is provided to Kiwanis International and your local club, and that this obligation is a firm obligation of the insurance company issuing the certificate.

Certificates of Insurance:

As noted above, it is essential to obtain certificates of insurance when conducting an event which utilizes facilities or services provided by outsiders. These certificates should be reviewed to determine validity, coverage, exclusions and limits of liability. Any deficiencies such as expired coverage and/or exclusion of performed activities and/or insufficient limits of liability may result in Kiwanis International and your local club absorbing an unnecessary loss. The bargaining power of Kiwanis International should allow effective contractual transfer through the use of *standard contracts* and *certificates of insurance*.

Waiver of Responsibility:

Another method of transferring your exposure to loss is the use of a *waiver of responsibility*. In consideration for the opportunity to attend or participate in a Kiwanis-sponsored event, the participant/attendee signs a waiver of responsibility form which constitutes an informed relinquishing of the known legal right to sue Kiwanis International. As a result of the execution of this form, Kiwanis International has had a potential liability and exposure to loss minimized. This approach should be used for any event which involves participants such as foot races, motor vehicles races of any type, sporting events, air shows, etc.

Hold-Harmless Agreements:

This method is a contractual commitment whereby a facilities/service provider, participant or attendee agrees to hold Kiwanis International and your local club harmless, and thus provide payment for losses that occur as a result of activities specified by the contract. The hold-harmless agreement is normally incorporated into the body of a standard contract and/or the waiver of responsibility. When this type of arrangement is used, it is imperative that a certificate of insurance be obtained from the service provider evidencing general liability

coverage including contractual liability in order to be certain that the hold harmless agreement is properly insured.

General Liability Insurance:

The purchase of comprehensive general liability insurance is a prime example of the contractual transfer of liability for payment of losses. In consideration of the premium paid, the insurer is obligated to pay claims on behalf of Kiwanis International after the occurrence of specified losses. This coverage is our primary line of defense, but by using the methods outlined above, we can effectively reduce our potential for loss and thereby prevent our own insurance from being subjected to unnecessary liability insurance claims.

The combined effects of the use of standard contracts which clearly define responsibility/liability, *certificates of insurance*, *waivers of responsibility*, and *hold-harmless agreements* aid in the process of shifting exposure/liability from Kiwanis International to the appropriate parties generating the risk. It is equally important that Kiwanians not sign contracts, waivers or hold-harmless agreements which result in the assumption of liability by their club or by Kiwanis International. It is understood that this is not always possible, but as a general rule, such assumptions of liability should be avoided whenever possible. The use of the techniques outlined above will allow the insurance protection afforded to Kiwanis International and its member clubs by the insurer to function properly. As a result, Kiwanis International can *proactively* control exposure to loss, and thereby control long-term insurance and loss costs.

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