

ACCIDENT PREVENTION/INSURANCE RISK INFORMATION

MARCH 2014

ATTENTION: STATE ACCIDENT PREVENTION CHAIRS

SAVE THE DATE: NOVEMBER 15TH

This year's Accident Prevention Seminar will be held on Saturday, November 15th. Additional information will be provided at a later date.

PARKED AUTOMOBILES/RV'S

Local Lodges should note the Self-Insured Master Liability Program is not responsible when automobiles and/or RV's are damaged while parked on Lodge property; no payments will be made to reimburse owners for any such damage.

Vehicle owners/operators park at their own risk; they must seek recovery from their own insurance carrier.



INFORMATION AVAILABLE ON THE ELKS WEBSITE

By logging onto the Elks website (www.elks.org/who/telephonedirectory.cfm or www.elks.org/resources/accident/), Lodge members have access to important contact information and claims handling instructions.

Lodge Members also have access to other important information about the various Grand Lodge Insurance Programs, including the mandatory Self-Insured Master Liability and Property Plus Programs and the voluntary D&O/Employment Practices and Workers Comp programs at www.elks.org/resources/accident/:

- ◆ The four most recent editions of this Accident Prevention/Insurance Risk "Information" newsletter.
- ◆ Various informational cover letters that provide information about the Master Liability, D&O and Workers Comp programs and the state associations' coverage needs.
- ◆ Access to full copies of the *Accident/Claim Prevention* manual; *Liability Insurance Program* booklet; and the *Property Plus Program Insurance Guide*.

Liability Claim Form Revised as of January 2014

Those Lodges that need to report a liability claim will also find a newly revised and fillable claim form available at www.elks.org/resources/accident/. When a liability claim is reported, a Lodge officer or manager now has the option of completing the fillable claim form online and submitting it directly to Gallagher Bassett Services with a click of the mouse (if possible, Lodges are asked to send any supporting claim documentation—including time-sensitive materials—to Gallagher Bassett Services by email: [GB-Oakbrook Terrace-Mail@gbtpa.com](mailto:GB-OakbrookTerrace-Mail@gbtpa.com) or by fax: 1-800-223-7006).

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DISCRIMINATION/SEXUAL HARASSMENT POLICY

Every Lodge should establish a discrimination/sexual harassment policy. For more information on what should be included in this policy, please refer to the *Accident/Claims Prevention* manual, Code 513100 (Pages 13-17); and the *Discrimination and Harassment Guide*, Code 510900.

If Lodges adopt the policies discussed in these booklets and implement the procedures they outline, Lodges will have reduced the possibility of having a damaging claim filed.

Of course, every Local Lodge should also consider obtaining D&O/Employment Practice coverage. To participate in the voluntary discounted D&O/Employment Practice Program offered through Chubb, please contact the Elks Team of Aon at 1-800-421-3557. Local Lodges can also visit/register on www.chubbworks.com for articles that provide additional information on how to avoid claims.



AVOID PUBLIC ADJUSTERS FOR PROPERTY LOSSES

It has come to our attention that some Local Lodges have obtained public adjusters after experiencing a property loss. This should not be done.

Hiring a public adjuster will delay adjustments and cost the Local Lodge money that will not be reimbursed as part of a claim. Public adjusters frequently make a pitch to handle a loss and ask the Local Lodge to sign a contract. Such contracts usually include paying the public adjuster a significant percentage of the total recovery.

Please review Page 57 of the *Accident/Claims Prevention* manual for more information.

MISCELLANEOUS TIPS

The Order assumes the first million dollars of each and every claim; therefore, the service of alcohol represents the greatest risk to the Self-Insured Master Liability Program. The service of alcohol is especially hazardous at parties or events, which are frequently commercial in nature and involve serving alcohol to the public. In these instances, no additional insured certificates will be provided to other parties. In every case, the individual/entity conducting the event or utilizing the Lodge facility must indemnify the Local Lodge and name the Local Lodge as additional insured under that individual/entity's insurance policy.

In these instances, those volunteers and employees who serve alcohol must act with increased vigilance to avoid serving anyone approaching intoxication (Lodges should never allow the self-service of alcohol through the use of beer kegs, pitchers, etc.).

Regardless of their size, it is recommended that security be provided for such events (preferably by authorized off-duty police officers).

OFFICERS/TRUSTEE BONDS

As a reminder, no separate bonds are needed under the Statutes of the Order. All bonding requirements as stated in the Statutes of the Order are covered under the crime coverage section of the Property Plus Program. If a Local Lodge purchases separate bonds for this purpose, it is an unnecessary expenditure.

COLD WEATHER PIPE DAMAGE

It has been a very hard winter for many sections of the country, so much so that many Local Lodges have had to deal with cold weather claims, including frozen pipes and sprinkler system damage. While performing spring cleaning around the Lodge, the facility should be assessed and plans made to avoid such occurrences during next winter's deep freeze. Insulation can be installed and exposed pipes can be wrapped.



GOLF BALL CLAIMS

On occasion, we receive claims from individuals who allege that their vehicles were damaged near a Lodge golf course. Whether or not these are legitimate claims, the Master Liability Program contends that the Local Lodge is not responsible. The claimants are told to submit such claims to their own auto carrier or to present this claim to the person who struck the ball.

If contacted about such a claim, the Local Lodge can provide the names of those on the golf course at the time, but the Lodge is not responsible and should not assume any responsibility.



**VOLUNTARY WORKERS COMP PROGRAM FOR LODGES
(CAN INCLUDE VOLUNTEER COVERAGE)**

Since October 2012, Local Lodges have been made aware of a voluntary Workers Comp program available through Lockton Risk Services that provides individually written policies and offers the following benefits:

- ◆ By using the “clubs not otherwise classified” rate, this program has the potential to offer Lodges a lower rate when compared to rates typically used.
- ◆ There are no surcharges made under assigned risk plans or for small groups.
- ◆ In most states, Local Lodges have the option of obtaining coverage for volunteers (an important benefit for Lodges that raised concerns when the secondary medical payments were eliminated under the Master Liability Program). However, the following exceptions must be noted:

State Workers Comp Programs (Monopolistic States)	States Where Volunteer Coverage is <u>Not</u> Allowed
<ul style="list-style-type: none"> ◆ North Dakota ◆ Ohio ◆ Washington ◆ Wyoming 	<ul style="list-style-type: none"> ◆ Connecticut ◆ New Jersey ◆ Texas ◆ Wisconsin

Eligible Lodges that wish to learn whether they would benefit from this voluntary program must contact **Lockton Risk Services directly at 1-877-735-6349** with questions or to obtain a quote.

Do not call the Elks Insurance Department or Aon Affinity Services.

PROBLEM AREAS

- Properly block stages or raised areas; do not allow traffic in areas without safeguards such as railings, signs or fences.
- Make sure that stairs are in good condition with hand rails and appropriate signs where necessary.
- If parking lot surfaces are not in good condition, do not use them. Make sure that all areas are well lit at all times and that they are cleared of ice and snow in the winter time.
- Lodges are not responsible for any damages done to vehicles while they are parked on Lodge property; the owner’s insurance must apply. Any claims submitted for such losses will be denied payment.
- When an employee is injured, the Lodge is required to report it to their Workers Comp carrier (the Master Liability Program never covers such claims). If the Lodge does not have such coverage, the Lodge must pay the claim out of its own pocket.
- No waxes or other substances can be used on dance floors. If dancers are unruly; dance in an unsafe manner; or jeopardize other dancers, Lodge management should take control and stop the offending parties.
- It is most important that anyone approaching intoxication is never served alcohol.





FLOOD INSURANCE

We would again remind all Lodges that the Self-Insured Property Plus Program does not provide flood insurance. The exclusion as stated in this Program is similar in all comparable package policies: "Flood, surface water, waves, tides, tidal waves or overflow of any body of water (whether driven by wind or not) or mud slides or mud flow." Without specific flood coverage, a flood loss would leave the Lodge uninsured.

If a Lodge is in a flood plain; if there is a realistic chance of floods; or if there is a risk associated with tidal activity, the Lodge should look into obtaining flood insurance through a governmental plan or through private carriers. Lodges can also obtain such separate/independent insurance by contacting Aon at 1-800-421-3557 for a quote.

SPRING CLEANING/FIX-UP

For Lodges in locations that have had a winter with ice and snow, spring again approaches. The list below is just a sample of what Local Lodge should do to prepare for the increased activity that warm weather brings:

- Parking lots and open-air areas may have damage or need maintenance; plans should be made now to make appropriate repairs
- Clean or remove any hazards that might result in claims being made during the spring and summer months; particular attention should be given to entrances and stairs.
- Fully inspect all areas in the Lodge that will experience an increase in activity.
- Properly mark and block access to areas that are not to be used by members and/or guests.
- Make sure that all multi-leveled areas are clearly marked or blocked (stages, dance floors or multi-level rooms).
- Most importantly, make sure that those responsible for serving alcohol (employees and volunteers) are properly trained to never serve anyone approaching intoxication. When in doubt, don't serve the patron.

LODGE ACCIDENT PREVENTION MANAGERS

Has every Lodge complied with the Statutes of the Order (12.070) and appointed someone in this position? See Pages 48-49 of the *Accident/Claim Prevention Manual* for a suggested description.

CHILD SUPERVISION

All Lodges should establish and strictly enforce the policy that children of members and guests are to have full and active adult attendance and supervision while on Lodge premises. Children should not be allowed to roam free throughout the Lodge or its facilities, including but not limited to the Lodge club areas, swimming pools, tennis courts, or any other recreational areas. It should also be a priority for all Lodges to comply with local laws by keeping minors out of areas where alcohol is being served. If members or guests refuse to comply with the Lodge's rules, these members or guests should be barred from using the facilities.

AUTOMOBILES/TRUCKS/BUSES

As a repeated thought, no Lodge should ever own an automotive unit:

- ♦ There is no coverage under the Self-Insured Master Liability program.
- ♦ Lodges must buy local insurance, which is expensive. The Lodge would probably not be able to get more than one million dollars in coverage and possibly considerably less than that. If a Lodge were to have any type of catastrophic loss, especially involving buses, the low limits of coverage could result in a judgment that would take all the Lodge's assets.
- ♦ There is no logical business or efficiency reason for a Lodge to own any vehicles licensed for road use.



SERVING OF ALCOHOL

Regardless of whether they are employees or volunteers, all those who serve alcohol should be certified and have proper training. Those who serve alcohol must also be observed, monitored and controlled by Lodge management on a continuing basis.

During the selection process for servers (employees and volunteers), the Lodge management must make prudent choices to avoid claims and/or other problems. The following are some situations where servers should be rejected or subjected to further investigation:

- ◆ Any person known to drink while serving alcohol or observed doing so.
- ◆ Any person having several drinks at the Lodge after his/her shift is over.
- ◆ Any person known or suspected of being a substantial alcohol user or considered in any way to be a problem drinker.
- ◆ Any person known to have an aggressive nature, a short temper or any history of violence.
- ◆ Any person hired to serve alcohol before a complete check has been conducted regarding previous employment.

Our employees and bartenders are the front line of defense against liquor-related claims. They should not have problems themselves, nor should they cause problems but, most importantly, they must be responsible to members and guests throughout the alcohol service process.



CLOSING TIME CHECKLIST

In the past few years, we have had claims involving improper procedures at closing time; management should appoint a responsible person to use the closing checklist in the *Accident/Claims Prevention* manual. If at all possible, money should not be left in the Lodge overnight.

SERVING ALCOHOL OFF-PREMISES

There has been a continuing trend where corporations and other entities that have concession contracts with event sponsors attempt to have not-for-profits serve alcoholic beverages at such events in return for a percentage of the proceeds. While Local Lodges see an opportunity to raise funds, they should also be aware of the fact that accepting such an arrangement usually means that the not-for-profits are required to provide the liquor liability insurance, which is unacceptable.

The Self-Insured Master Liability Program assumes the first million dollars of each and every occurrence. When we consider the recent verdicts of over \$100 million dollars entered against other not-for-profit organizations (where service was provided at such outside events) and the recent \$28 million dollar verdict against a Local Elks Lodge for a Lodge function, it becomes even more clear that the Order cannot afford to have the Self-Insured Master Liability Program misused in such a fashion (if Local Lodges were insured by individual policies, they would not be allowed to function in this way due to underwriting rules).

Local Lodges must also remember that assessments are predicated on the normal exposure derived from the Lodge's operations. The Self-Insured Master Liability Program includes liquor coverage for the service of alcohol at the Lodge; it was not meant for expanded, less controllable exposures outside the Lodge (during an off-site event circumstance, the rule that anyone approaching intoxication should not be served alcohol is nearly impossible to maintain) Lodges should not participate in the commercial service of alcohol that benefits other organizations or presents an exposure not related to the normal operations of the Lodge facility. The Order cannot allow other organizations to use the Self-Insured Master Liability Program in this improper fashion.

For the reasons mentioned above, it has been decided that Certificates of Insurance will not be issued for events that involve serving alcohol to the public and require that outside entities be named as additional insured.





BOATS/DOCKS/MARITIME EXPOSURE

It has come to my attention that some Local Lodges may have exposures related to docks and various areas related to the use of boats.

The Self-Insured Master Liability Program specifically excludes coverage on any owned boats propelled by engines of any type or by sail and any rowing boats over 18 feet in length. The Local Lodge is covered for claims arising out of the use of non-owned water crafts under 52 feet in length (there is no coverage for any owner of any boat).

Any Local Lodge with docks or mooring facilities has a dock or mooring facility should purchase an appropriate marine docking liability policy to protect the Local Lodge from any claims arising out of the use of such facilities presented by owners of moored boats or any other third parties (this is the case regardless of whether the spaces are rented or provided free). Such a policy must cover docks, moorings and other facilities that allow for launching or maintenance.

Local Lodges with such exposures should also ensure that their Workers Comp policy (obtained through Lockton or locally) includes appropriate endorsements that provide coverage and defense under Federal or state laws for work-related claims arising out of allegations of injury in maritime or dock circumstances.

It should also be noted that the Property Plus Program does not provide flood coverage on docks or marinas, nor does it provide coverage for any "storm surge." Local Lodges can try to obtain outside/independent coverage on an all risk marina form that would cover floods and storm surges; contact Aon to get a quote for such coverage at 1-800-421-3557 or contact someone locally.

LEGAL REVIEW

The start of a new Lodge year is a good time to take stock and review the status of its legal health:

- What is the legal status of the Lodge? Is it a corporation or an unincorporated association? What is the status of any affiliated or related entities? Does Lodge management know where legal documentation is located? Are required filings and registrations maintained appropriately? (In general, it is recommended that Lodges and any necessary affiliated corporations be established as not-for-profit corporations in the state of their domicile).
- What contracts or obligations has the Lodge assumed and are all assumptions of liability or established obligations of the Lodge appropriate, necessary, and for the benefit of the Lodge and its members? The officers and trustees should know of any obligations and maintain proper records.
- Are contractual obligations established on an equitable basis with no conflict of interest or any appearance of a conflict of interest present?
- Does the Lodge have written personnel policies and work rules?
- Does the Lodge attorney or persons knowledgeable in contract matters review all contracts submitted for acceptance?
- Has the Lodge previously anticipated the possible need for emergency repairs resulting in executed service contracts with repairmen, plumbers, electricians, etc.? If so, such contracts should provide the Lodge with indemnification and require that all contractors provide evidence of liability insurance that includes contractual liability coverage and names the Lodge as additional insured on the contractor's policy. Lodges are to make sure that such indemnification includes the employer's obligation to protect the Lodge from any claims made by the contractor's employees.
- Is Lodge management aware that it is generally unacceptable to indemnify other individuals or corporations?
- Are the Lodges financial and business records properly filed for retrieval and provided with back-up redundancy?
- Has the Lodge prepared a rental agreement or contract to be signed by individuals or entities using the Lodge on a basis allowed by the Statutes of the Order? In these agreements, the entity using the Lodge should hold the Lodge harmless for activities under their control and provide evidence of insurance coverage (see Pages 10-11 of the *Liability Insurance Program* booklet).



Please review the *Accident/Claim Prevention* manual and the *Liability Insurance Program* booklet for additional topics.