

Are We Our Chapters' Keeper? A Perspective on an Association's Chapter Exposures

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National and international associations often misunderstand the insurance exposures arising from their chapters as well as the chapters' need for insurance. Chapters can get themselves into trouble and unintentionally involve the national association in a claim or public relations crisis. To most people the chapter is the organization so anything the chapter does reflects upon national. Local chapters are the face of your association to the general public, vendors, media and even local members. A classic example, a friend was considering a position with a national association that he did not know much about. A co-worker, a member of the association, sent him information about the organization all of which was about the local chapter, not the national organization. My friend still did not know much about the national association.

The chapter as association perception is held no matter what the chapter or affiliation agreement says about the relationship between the national body and chapters. Your agreement may state clearly that the chapter is a separate legal entity and not an agent of your association but that legal distinction is lost on others.

The Exposures

Chapters hold meetings, social events, may offer education sessions or a conference and even raise funds for the association's foundation or an adopted charity. During these activities someone can get hurt, a member or an outsider, or the chapter can cause damage to another party's property (damage to the hotel or restaurant). If the chapter has a board or governing committee there is the potential for allegations of mismanagement or improper governance.

So why should the national association worry about insurance and its chapters? Because no matter what the affiliation or charter agreement says, the national association can be brought into a liability claim.

When We are One

When chapters are the association, national will be held responsible for the actions of its chapters through the concept of vicarious liability¹. These chapters and their members are agents of the association with authority to act on behalf of the association which in turn will be held responsible for the chapter's actions. In addition to vicarious liability, the injured party can allege the association was negligent in

supervising or managing its chapters. When national and the chapters are “one” the association faces the double whammy of being responsible for the actions of its chapters and the association’s lack of proper oversight.

When We are Separate

Even when chapters are separate legal entities per an affiliation agreement, the association will still be involved in a claim. As a separate entity the chapter usually is not an agent of the association so the association is not vicariously liable for the chapter’s actions. But the association is not off the hook. The association will be named in the claim regardless of the chapter relationship – remember the public and injured party considers the chapter as the association. The association’s insurance company should defend the association including the costs of being excused from any legal action.

Another potential cause of action is the allegation that the association was negligent in its oversight or supervision of the chapter that resulted in the chapter’s misbehavior. The claimant will contend the association did not meet its standard of care in managing its chapters. The allegation will argue the association knew or should have known what the chapter was doing and if it had supervised its chapter properly the loss would have been prevented. This may be a factor if the chapter is violating any aspect of the affiliation agreement.

Regardless of the relationship with its chapters, national and international associations have loss exposures from their chapters. The association’s first goal is to ensure that its insurance program will protect it in the event of a claim involving a chapter. The second goal is to address the insurance needs of its chapters to protect both the chapter and the association.

Insurance Options

The design of the insurance programs for both the association and its chapters depends upon the agreement between the national organization and its chapters. The types of agreements are as varied as the number of associations. Just as there is no “right” chapter agreement or management technique there is not one best way to insure a chapter’s exposures. Your association’s approach depends upon the nature of the chapter agreement and the relationship between national and its chapters. Here are a few options for insuring chapters.

National’s Insurance Program

An association can elect to include coverage for its chapters under its insurance program. This approach can be used when the chapters are the association or separate entities. The chapters are either a part of the named insured or listed as additional insureds on the national association’s insurance policies. The downside to this approach is that the national association shares its policy limits with all of the chapters.

National Program — Separate Group Policies

Another option is a separate insurance program for chapters. Under this structure, all chapters plus the association are named insureds covered under separate policies for the chapters. Such a program usually includes general liability and Directors & Officers liability policies. One limitation of this approach is that all chapters share the same limits of liability. An association may be able to negotiate the aggregate limit of liability to apply on a per chapter basis to overcome this limitation.

Separate Program — “Purchase Group”

The national association may arrange the development of an insurance program that the chapters can access. This program may be similar to an “endorsed” or “sponsored” insurance program for members. The program can either have separate policies for each chapter or use master policies with certificates of coverage for the participating chapters. With this option, each chapter has its own limits of liability for each policy. Chapters can choose to participate or seek coverage elsewhere. Chapters are responsible for all premiums with minimal involvement of the national association beyond establishing the program.

No Program

Under the last option the national association does not offer any insurance assistance to its chapters. Each chapter is responsible for its own insurance program or free to decide not to purchase insurance. One variation of this approach is for the national association to establish an informal agreement with its insurance brokerage firm to write any chapters seeking coverage.

Summary

Associations have lots of options for interacting with its chapters including how to address their insurance expectations and needs. Understanding and assessing your risks is the first step followed by implementing the appropriate risk management strategies. All associations with chapters have a direct liability² exposure from its chapters. Additionally the association may be vicariously liable for its chapters' actions. Your insurance professional can help you evaluate your exposures and insurance options to establish an insurance program that is best for your association and chapters.

NOTES

¹ **Vicarious liability** arises from the common law doctrine of agency through the concept of respondent superior (“let the master answer”) where a master (employer) is liable in certain cases for the negligent acts of his servant (employee). Under vicarious liability one person or entity is liable for the negligent actions of another person even though the first party was not directly responsible for the injury. Society justifies vicarious liability on the belief that the entity that has the right, ability or duty to control and benefits from an individual’s actions should bear the costs of any resultant harm.

Within the association world, the national organization may be the master and the chapter and its members are its agent whereby the association is vicariously liable for the chapter’s actions. The chapter agreement or affiliation agreement is the basis for establishing or denying the agency relationship. When an agency relationship exists the association is vicariously liable for the chapter’s actions. If the chapter has insurance its policy will pay but the national association can also be financially responsible for a claim.

² **Direct Liability** - In legal terms a person or organization is liable when it is legally responsible for damages due to negligence. Negligence is when the individual failed to perform the standard of care that society expects of a reasonable person in similar circumstances. For an association direct liability exists when the association was directly responsible for failure to prevent an individual from acting in a way that would cause harm. Examples include allegations of negligence for failure to supervise, investigate or report an improper action of a chapter. The charges may also allege negligent employment (including volunteers) or retention of personnel. Under direct the liability the association’s actions or inactions are the direct cause of the harm.