INSURANCE TOPICS & HOW TO MANAGE YOUR ORGANIZATION’S RISK
In 2003, the National Trust for Historic Preservation created a new for-profit subsidiary, National Trust Insurance Services, LLC (NTIS), to meet the challenging insurance issues facing historic properties across this country. In short, National Trust Insurance Services is a specialty broker/agent. The insurance firm of Maury, Donnelly and Parr (MDP), holds all appropriate insurance licenses.

As a specialized broker/agent, NTIS has become the leading expert in providing insurance solutions to preservation organizations, theatres, historic sites, house museums, historic hotels, historic churches, historic commercial buildings, Main Street organizations and other miscellaneous historic structures.

We help procure insurance coverage for all types of policies including, however not limited to, Property, Fine Arts, General Liability, Umbrella Liability, Workers Compensation, Directors & Officers, and Volunteer Accident insurance.

Finally, we work exclusively with a broad range of insurance carriers who also understand this complex class of business and who also feel that this is an elite class of insurance risk because of the highly dedicated Boards and staff who help oversee the building’s maintenance and safety needs.

The ultimate mission of NTIS is to educate clients in regards to their exposures and to secure a comprehensive and competitively priced set of policies that protects the historic asset itself and the organization that operates within.
COMMON METHODS OF RISK MANAGEMENT

1. Avoid (i.e. don’t do it)

2. Retain (i.e. self insure)

3. Transfer (Today’s topic)
   - Insurance (transfer risk to insurance company)
   - Contractual (transfer risk to vendor, etc.)
INSURANCE COVERAGE

Property Insurance (Your Stuff)
1. What is covered?
2. How will carrier rebuild/replace?
3. For what causes of loss?
4. Using what limits?

Liability Insurance (Your Negligence)
1. Types of coverage?
2. Using what limits?
3. How is legal defense handled?
PROPERTY COVERAGE
(i.e. Your Stuff)

What is typically covered?

Based on “Replacement Cost” Valuation

• **Building** – The structure and everything “fixed” to the building (i.e. including HVAC equipment, etc)

• **Contents** - (i.e. office equipment, gift shop inventory, etc)

• **Business Income and Extra Expense** – Operational revenue to keep the organization afloat if the building is closed because of a claim (i.e. net income, payroll, etc.)

Based on “Market Value” Valuation

• **Fine Arts** – Collectable items, etc.
PROPERTY COVERAGE
(i.e. Your Stuff)

How will carrier “make you whole” after a claim (i.e. Valuation Clause)?

**Building, Business contents, & Business Income**

- **Actual Cash Value (worst)**
  - Replacement Cost less Depreciation (i.e. similar to auto insurance)
  - Used for Vacant buildings mostly

- **Replacement Cost (best)**
  - Cost to repair using “like kind and quality” materials. Language can be subjective from insurance carrier to insurance carrier. Traditionally this is best wording available.

- **Historic Replacement Cost (very best)**
  - Cost to repair using “the same historic materials, craftsmanship, and architectural methods”.
  - This is the gold standard for how an historic building should be insured
  - Language not available with many insurance carriers.
PROPERTY COVERAGE
(i.e. Your Stuff)

How will carrier “make you whole” after a claim (i.e. Valuation Clause)?

- **Market Value (good)**
  - Generally means the amount/cost at the time of the claim that it would take to replace an item with another of similar age, quality, origin, appearance and condition.
  - Fairly subjective claims handling (what is a “one of a kind” item worth)?
  - Helps to have pre-claim substantiation (appraisal, etc).

- **Agreed Value (also good)**
  - The specific value listed for each item on the policy (or on file with the carrier)
  - Typically requires an appraisal (or substantiation)
PROPERTY COVERAGE
(i.e. Your Stuff)

For What Causes of Loss?

- **Basic Form (worst)**
  - Covers *only* named events/perils... fire, lightning, explosion, smoke, windstorm, hail, riot, civil commotion, aircraft, vehicles, vandalism, sprinkler leakage, sinkhole collapse, and volcanic action
  - Thus, would not cover items such as Weight of Snow, Ice, Water Damage, Collapse.

- **Special Form (best)**
  - Covers *all* events/perils that are not excluded. So, unless it’s excluded... it’s covered.
  - Common exclusions include... Flood, Earthquake, Nuclear, Governmental Action, War, etc.

*Note* – Flood coverage is typically separate via the National Flood Insurance Plan (NFIP). Earthquake can be added (if not in Earthquake Zone)
PROPERTY COVERAGE
(i.e. Your Stuff)

Using what limits?

- **Building Limit**
  - Use replacement cost appraisal, or ask for help from your insurance agent.
  - Typically a historic museum should be insured for no less than $150 per square foot. Can be much higher though.

- **Contents Limit**
  - Take an internal inventory.

- **Business Income Limit**
  - Ask your Insurance Agent for a “Business Income Worksheet”.

- **Fine Art Limit**
  - Seek the advise of a third party (fine art appraiser, etc)

**Beware of the Coinsurance Clause**
(i.e. penalty for under-insurance)
PROPERTY CLAIM SCENARIO

Broken internal water pipe bursts causing $400,000 of damage to building (i.e. raised panel wainscoting) and fine art (i.e. exhibit space).

Questions:
1. Do you have coverage for building and fine art?
2. What Cause of Loss Form do you have?
   • If Basic Form... you have no coverage (water damage isn't covered)
   • If Special Form... you have coverage.
3. What Valuation Clause do you have for Building?
   • Actual Cash Value? Depreciation will result in reduced claim check.
   • Replacement Cost? Some of the historic elements may not be repaired to your liking.
   • Historic Replacement Cost? Specialty/artisan contractors/materials can be used to repair historic elements.
4. What Valuation Clause do you have for Fine Art?
   • Market Value or Agreed Value?
5. What Limits?
   • Are you under-insured? If so, Coinsurance will result in reduced claim check.
INSURANCE COVERAGE

Property Insurance (Your Stuff)
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1. Types of coverage?
2. Using what limits?
3. How is legal defense handled?
LIABILITY COVERAGE (i.e. Your Negligence)

Types of Coverage

- **General Liability**
  - Third party bodily injury and third party property damage
  - For example, a patron falls on buffed floor or is overserved alcohol
  - Coverage can include Liquor Liability and Special Event Liability, however needs to be requested.
  - All causes of loss are covered except for excluded items
    - Common exclusions include contractual liability, pollution, etc.

- **Umbrella Liability**
  - Policy extends underlying General Liability policy (and other policies)
  - For example, $1m General Liability + $5m Umbrella = $6,000,000 total coverage

- **Directors & Officers Liability**
  - Provides coverage for “Wrongful Acts” (as defined in the policy). Typically includes actual or alleged errors, misstatements, neglect, breach of duty, slander, etc.
    - Policy has exclusions... such as Breach of Contract and others.
  - Coverage can include Employment Practices Liability which covers employment related issues (i.e. wrongful termination, harassment, etc).
LIABILITY COVERAGE (i.e. Your Negligence)

Types of Coverage

- **Workers Compensation**
  - Covers employee injury *(which you want)*... and Uninsured Contractors hurt on Site *(which you don’t want)*
  - State dictates the “rules” and benefits. Coverage does not change from carrier to carrier.
  - Class Codes are used to delineate between job duties. Typically;
    - 8810 (Clerical) – finance, receptionist, etc
    - 9101 (Museum, Other than Professional) – docents, grounds maintenance, gift shop, etc

- **Volunteer Accident**
  - Provides supplemental medical and accident coverage for injury to a volunteer as a result of them working on your behalf.
  - Coverage is needed because injury to volunteers is not covered by Workers Compensation (as they are not paid employees) and is often not covered by the organization’s General Liability policy.

- **Miscellaneous**
  - Auto Liability
  - Cyber Liability
  - Fiduciary Liability
LIABILITY COVERAGE (i.e. Your Negligence)

Using what limits?

- **General Liability**
  - Standard GL policy provides $1,000,000 per occurrence/claim and $2,000,000 annual aggregate.

- **Umbrella Liability**
  - Limits available from $1,000,000 to $100,000,000

- **Directors and Officers Liability**
  - Smaller organizations should carry at least $1,000,000. Larger organizations should consider limits up to $5,000,000.
  - Board’s “risk tolerance” is a large factor, as well as organizational activity (i.e. fundraising? Construction?).

- **Workers Compensation**
  - Unlimited (per State benefits).

*Your insurance agent doesn’t have a crystal ball. “Buy as much insurance as you can reasonably afford to spend”*
LIABILITY COVERAGE (i.e. Your Negligence)

How is Legal Defense Handled?

- **General Liability**
  - Typically legal defense is OUTSIDE the limit of liability. Thus, legal defense is unlimited.

- **Umbrella Liability**
  - Follows the General Liability

- **Directors and Officers Liability**
  - It depends and should be a factor when choosing your limit. Often, legal defense is outside the limit of liability (and thus doesn’t erode your limit)... however, it can be included within the limit of liability.

- **Workers Compensation**
  - N/A. Typically handled without attorneys.
Active shooter scenario occurs. Loss of life occurs and others are injured trying to flee the property. Attorneys for injured sue the museum for third party bodily injury (i.e. General Liability) and they also sue the board for improper security methods (i.e. Directors and Officers Liability). Lawsuit seeks $5,000,000 in damages.

Questions:

1. Do you have General Liability? Directors & Officers Liability?

2. What limits of insurance do you carry?

3. How is legal defense going to be handled?
LIABILITY CLAIM SCENARIO #2

While cleaning your gutters, a third party contractor falls off a ladder and injures himself.

Questions:

1. Does the contractor have Workers Compensation coverage of their own?

2. If not, what happens next?
Why be on the hook for claims when someone else should pay? Help prevent your business from becoming the deep pocket.
TRANSFER RISK TO THIRD PARTY

Three Legged Stool of Risk Management

- Indemnification Agreement (within Contract)
- Insurance Requirements (within Contract)
- Proof of Insurance (via Certificate of Insurance with Additional Insured)
TRANSFER RISK TO THIRD PARTY

**Contract with Indemnification Agreement**
- Have a legal agreement with the vendor/contractor to “hold you harmless” in the event their negligence causes you harm (i.e. you get sued)

**Contract with Insurance Requirements**
- Spells out exactly what insurance the contractor or vendor needs to carry.

**Certificate of Insurance**
- A document (produced by their insurance agent) that as of the date the Certificate is issued, they have active coverage. Document shows insurance carrier information, policy number, limits, terms of policy, etc.
- Your organization should be listed as Additional Insured.
SAMPLE INSURANCE REQUIREMENTS

Minimum limits required:

**General Liability:**
- Each Occurrence: $1,000,000
- Additional Insured Entities: Owner and related entities and their respective officers, directors, and employees must be named as Additional Insured

**Auto Liability:**
- Combined Single Limit: $1,000,000
  - Includes Owned, Non-Owned & Hired Autos

**Workers Compensation:**
- Statutory Benefits for All Employees
- Waiver of Subrogation endorsement in favor of Owner and related entities and their respective officers, directors, and employees.

**Umbrella:**
- Each Occurrence and in the Aggregate: $1,000,000

Notes
- Umbrella limit should be changed based on work being done... from low hazard (janitorial vendor) to high hazard (construction projects)
- Additional coverages... such as Liquor Liability, Professional Liability, etc should be added based on work being done on behalf of museum.
SAMPLE INSURANCE REQUIREMENTS

ADDITIONAL REQUIREMENTS

• All policies must be written with insurers maintaining an A.M. Best Rating of A-IX or better.

• All coverage required in this contract must be primary and non-contributory to any insurance maintained by Owner.

• Each policy must be endorsed to require at least 30 days notice of cancellation (10 days for non-payment of premium) to Owner. If, after reasonable effort, Contractor is unable to secure such endorsement, Contractor must provide Owner written notice of any cancellation within 3 working days of any written or oral notice of such cancellation.

• Contractor waives all rights against Owner to the extent of any insurance carried or required to be carried under this agreement.

• These requirements apply to all work done at any time in connection with or related to this project including any warranty, rework or additional work performed following the completion of this contract.

• Neither failure to monitor compliance with these requirements nor failure to identify a deficiency from evidence provided will be considered a waiver of such requirements.
SAMPLE INSURANCE REQUIREMENTS...

ADDITIONAL REQUIREMENTS... continued

• Failure to obtain and to keep in force any of the required insurance coverage shall be deemed to be sufficient cause for termination of this contract for default.

• Contractor’s liability shall not be limited to the limits of any required insurance.

• All subcontractors will be required to comply with the above requirements as well.

• Contractor shall give prompt notice to Owner in the event of any accident or occurrence on the premises or related in any way to this contract.

• Limits required may be purchased in any combination of primary and excess to achieve the required total limits.

• DOCUMENTATION TO BE SUBMITTED PRIOR TO THE START OF THE WORK AND AT EACH INSURANCE RENEWAL OR REPLACEMENT UNTIL INSURANCE IS NO LONGER REQUIRED
  • Certificates of Insurance evidencing requirements above
CERTIFICATES OF INSURANCE – TOP HALF

**CERTIFICATE OF LIABILITY INSURANCE**

<table>
<thead>
<tr>
<th>INSURED: Lakewood Alive</th>
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<tbody>
<tr>
<td>16701 Detroit Avenue #L1-10</td>
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<tr>
<td>Lakewood, OH 44107</td>
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**INSTRUCTORS**

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<tr>
<th>NATIONAL FIRE &amp; MARINE INSURANCE CO.</th>
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**COVERAGES**

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<tr>
<th>TYPE OF INSURANCE</th>
<th>LIMITS</th>
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<tr>
<td>EXCESS LIABILITY</td>
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<tr>
<td>1,500.00</td>
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</table>

**EXCLUSIONS**

- "Vendors" name
- Insurance Company Name
- Coverage
- Additional Insured (Yes if "X")
- Policy Number
- Term
- Limits
### CERTIFICATES OF INSURANCE – BOTTOM HALF

<table>
<thead>
<tr>
<th>AUTOMOBILE LIABILITY</th>
<th>COMBINED SINGLE LIMIT</th>
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<tr>
<td>ANY AUTO</td>
<td>LOSS IN theories</td>
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<tr>
<td>OWNER DRIVEN ONLY</td>
<td>PROPERTY DAMAGE</td>
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<td>WORKS AUTO ONLY</td>
<td>BODILY INJURY/DISEASE</td>
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<tr>
<th>UMBRELLA LIABILITY</th>
<th>OCCUR CLAIM MADE</th>
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<tr>
<td>EXCESS LIABILITY</td>
<td>EACH OCCURRENCE</td>
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<tr>
<th>WORKERS COMPENSATION</th>
<th>SIR, CIR</th>
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<tr>
<td>EMPLOYER LIABILITY</td>
<td>EACH ACCIDENT</td>
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**DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES**
Lakewood Masonic Temple is listed as an additional insured in regards to the event being held on Saturday February 24th, 2018.

**CERTIFICATE HOLDER**
Lakewood Masonic Temple
15360 Detroit Avenue
Lakewood, OH 44107

**CANCELLATION**

- [ ] Should any of the above described policies be cancelled before the expiration date, therefore notice will be delivered in accordance with the policy provisions.

**AUTHORIZED REPRESENTATIVE**

- Your organization’s name as Cert Holder
CONSIDER THIS

Your venue hires a third party catering company to serve alcohol during performances. As a result of the vendor’s improper protocols, a 19 year old is overserved alcohol... leaves the venue... and injures many innocent victims in a drunk driving accident.
RISK TRANSFER IN ACTION

WITH FULL CONTRACTUAL RISK TRANSFER

• You have signed Indemnity Agreement with Vendor stating they have to legally hold you harmless for their actions.
• The Contract spells out exactly what the Vendor needs to carry (i.e. Liquor Liability).
• You have Certificate of Insurance naming the theatre as Additional Insured
• You file claim under THEIR General/Liquor Liability policy and are fully protected and covered by their policy
• NOTE – Your General Liability policy is a “safety net” in case it is needed

WITHOUT FULL CONTRACTUAL RISK TRANSFER

• You have signed Indemnity Agreement with Vendor stating they have to legally hold you harmless for their actions. (GOOD)
• The Contract spells out exactly what the Vendor needs to carry (i.e. Liquor Liability). (GOOD)
• You fail to collect a Certificate of Insurance. Coincidentally, the Vendor let their policies lapse by not paying the premium. The Vendor was uninsured while working on your behalf. (BAD)
• While the Vendor is legally obligated to hold you harmless, they have no assets and no financial methods to protect you.
• Your insurance is likely the primary and sole remedy
THANK YOU

www.nationaltrust-insurance.org
ksullivan@mdpins.com
410-547-3176