

# ~ ~ STATE ACCIDENT PREVENTION CHAIRMEN ~ ~

## INFORMATION

### JUNE 2008



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### LIABILITY INSURANCE PROGRAM BOOKLETS

The Liability Insurance Program Booklet for the 08-09 year, the Accident Prevention Manuals, claim forms, self-inspection forms and the instructional letters (including a reminder about D&O/Employment Practice coverage) have now been mailed to all Lodges.

We would urge you to review coverage, exclusions and safety provisions. Pay special attention to Pages 10-11 of the Liability Insurance Program Booklet, which provide instructions for how to proceed if the Lodge allows other individuals or corporations to use the Lodge premises.

The Accident Prevention Manual should be used to review accident prevention procedures on a daily, weekly and monthly basis.

### PARADES

The Master Liability Program can not assume responsibility for conducting a parade. In most cases, the city, state or county will want to be named as additional insured under the Elks Master Liability Program. Such certificates will not be issued. The sponsoring Lodge must purchase separate independent parade insurance. For example, many Lodges sponsor Mardi Gras parades and always have extensive independent insurance coverage.

If any Lodges does attempt to sponsor a parade, the Lodge should also make sure that all outside participants indemnify the Lodge and name the Lodge as additional insured under that entity's general liability policy in addition to obtaining parade insurance. In order to finance the Lodge's independent insurance, the Lodge can charge the outside entities a fee.

If the Lodge is only a participant with a float or a vehicle in a parade sponsored by others and a certificate of insurance is required, the Master Liability Program will provide this coverage.

To repeat, the only prohibition is if a Lodge attempts to be responsible for the total parade.

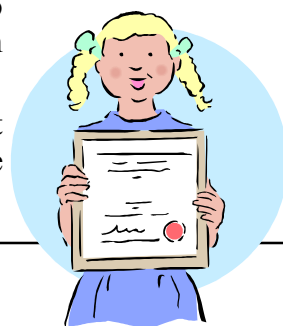
### CHAIRS AND STOOLS

In recent weeks, I have received many reports where Lodges have encountered these types of claims.

As has been stated for many years, don't throw the offending chair or stool away. Keep It! I repeat: Keep It! The manufacturer may be responsible. Our claims adjuster can make a demand on the manufacturer.

More important than keeping a chair after an accident has occurred is for a Lodge to regularly check the condition of chairs and stools and repair or discard any that are worn or defective. If they are repaired, make sure it is a competent job.

Lodges should use the monthly safety inspection report on Pages 32-33 of the Accident Prevention Manual to check on the conditions of chairs and stools. This should be done on a monthly basis, at the very least.



## BOATS/DOCKS/MARITIME EXPOSURE

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

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

If the Lodge has a dock or mooring facility, regardless of whether or not the spaces are rented or provided free, the Lodge should purchase an appropriate marine docking liability policy to protect the Lodge from any claims arising out of the use of such facilities presented by owners of moored boats or any other third parties. Such a policy must cover docks, mooring and other facilities used to enable launching or maintenance.

Lodges with such an exposure should also make sure that the Lodge's Workers' Compensation policy (obtained 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.



## ROOF MAINTENANCE

The Property Plus Program provides roof coverage on Lodge buildings, but only for actual damage caused by a covered peril. It does not replace portions of the roof that are worn out by reasons of wear and tear or age.

Every type of roof has an expected life period. All Lodges must be responsible for appropriate maintenance and replacement. Proper planning should be established to accomplish these goals.

## GOLF BALL CLAIMS

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

If such a claimant does contact the Lodge, the names of the golfer on the course at the time of the alleged accident can be provided, but the Lodge is not responsible and should not assume any responsibility.

## DEATH BENEFITS

The Insurance Department frequently receives mail or emails from the families of deceased members asking if there are any life insurance benefits due them. The Statutes of the Order prohibit such benefits.

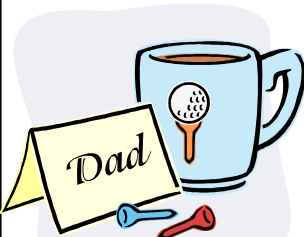
## LIFE SAFETY IN LODGES

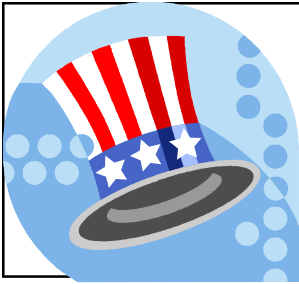
In areas occupied or used by members or guests, Lodges should have appropriate safety devices such as fire, smoke and carbon monoxide detectors. If a Lodge owns any facilities rented to or used by individuals as living quarters, these same devices should be provided.

Furthermore, any facilities should be free from lead paint and asbestos exposure. (Any claims alleged from these sources are not covered under the Master Liability Program.)

Entrances and exits must be accessible and properly constructed and configured.

In every case, all fire safety, zoning and construction code provisions must be complied with.





## **NOTICE! NOTICE! NOTICE**

I am again requesting that State Accident Prevention Chairmen or other interested persons provide the Director of Insurance with suggested topics, problem situations, potential claim problems, questions, loss prevention activities or informational data for the "Information" Newsletter. Ideally, this communication should be generated from many sources within the Order.

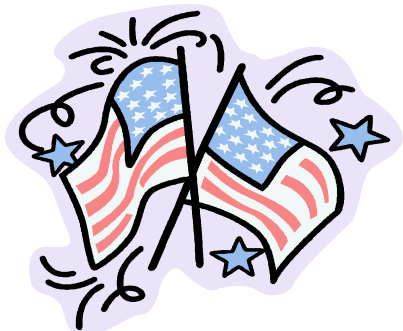
## **SPRINKLERS STOP FIRES**

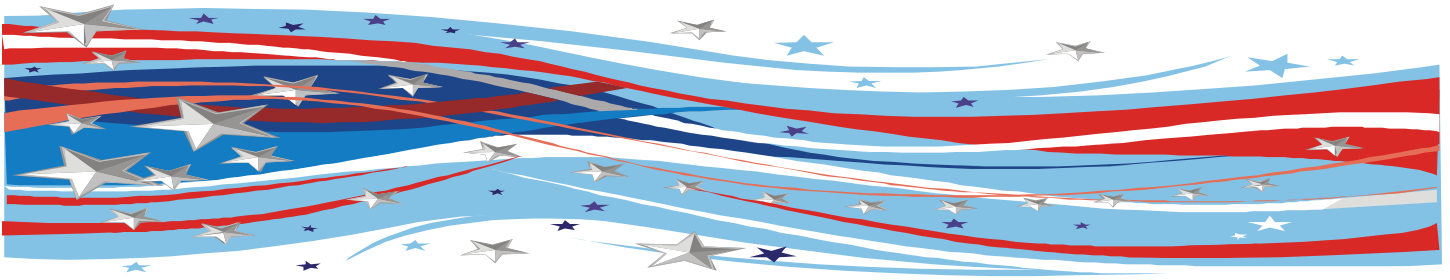
In recent years, many state municipalities and other governmental bodies have begun to require retrofitting sprinklers in facilities that have the potential to accommodate a large group (this might be 100 or some other indicated number) as well as installing sprinklers in newly constructed buildings.

It has always been recommended that all Lodges install sprinklers when building a new Lodge because the small added construction cost is offset in a few years by the reduction in assessments under the Property Plus Program. I have now been informed that the new technology has reduced the cost of retrofitting, even where water pressure may be low. Many Lodges might benefit by considering such a solution and improving the Lodge with a short payback period derived from the reduction in the Lodge's Property Plus assessment.

## **SUMMARY OF TOPICS FOR ACCIDENT PREVENTION MEETINGS**

1. Never serve anyone approaching intoxication. Count the drinks. If in doubt, cut the patron off. The Drug Awareness effort extends to more than just programs for children.
2. Lodges must be well maintained and should complete the self-inspection reports and take action to correct deficiencies. Lodges should also use the other inspection forms and reports in the Accident Prevention Manual.
3. Make sure that each Lodge has appointed an accident prevention manager as required in the Statutes of the Order.
4. Make sure that the Lodge has Workers' Compensation coverage. Even if a Lodge has no employees, it should have a defense policy in the event that a person contends they are employed. The Master Liability Program does not cover such claims and can not defend such allegations.
5. Lodges should not engage in any fundraising ideas that generate risk or exposures with the high potential for losses or catastrophic events.
6. Lodges should be cautious about assuming obligations under contracts or other documents. Legal advice should be sought.
7. Lodge management should seriously consider obtaining Directors and Officers (D&O)/Employment Practice coverage through the discounted program offered by the broker. Remember that the Master Liability Program does not provide this coverage. Without this coverage, the personal assets of the Lodge officers and managers are at risk.
8. Lodges must have licensed persons to remove hazardous material (asbestos, lead, etc.).
9. If there is a liability claim, the claims report must be completely filled out. Copies of these reports are in the Liability Insurance Program Booklet.
10. Make sure that special care is taken to maintain, mark and control access to stairs, stages, entrances or any areas with different levels.
11. Persons or corporations leasing or using the Lodge's premises and/or facilities should follow the instructions on Pages 10-11 of the Liability Insurance Program Booklet. Obtain indemnification and, in most cases, be named as additional insured on the leasing party's insurance policy.





## **CLAIM REPORTS FROM LOCAL LODGES**

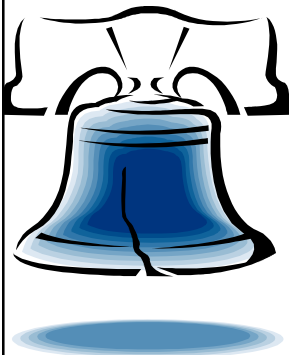
As we have stated in the past, Lodges should do a better job of completing claim reports:

- The report must be completed by an authorized representative of the Lodge, NEVER by the injured party or their representative.
- Fill in all spaces.
- If there is any indication that the claim is questionable or that the claim by the alleged injured party is misstated, please make such comments on the report.
- Any information helpful to the defense of the claim should be provided. If additional space is needed, add a page to the report.
- After any incident, the Lodge should attempt to take pictures of the site of the alleged incident. Each Lodge should have an inexpensive disposable camera available at all times.
- The Master Liability Program does not cover claims by employees injured while working. Such matters should be reported to the Lodge's Workers' Compensation carrier, not the Master Liability Program.
- Damage/vandalism to cars or personal property that occurs on the Lodge premises or in the parking lot that is not caused by Lodge negligence will not be paid under the Master Liability Program. Such incidents should be reported and paid by the insurance carriers of the parties who own the property.

## **EMPLOYMENT DEFALCATION AWARENESS**

The accident prevention chairmen should, on a continuing basis, remind the officers and management of Lodges about the acts of infidelity by employees, officers or members that can lead a Lodge to bankruptcy or serious financial problems. Even small defalcations on a continuing basis (and over time) can lead to a weakening of the overall financial vitality of an organization. All too often, a Lodge is operating on a narrow survival margin. This type of incident can act as the final blow.

Every Lodge should always follow good accounting practices with a separation of functions to avoid one party having total control over expenditures or fundraising. This does not mean that the system has to be overly elaborate or difficult. A system to suit each Lodge will have separate functions to make sure more than one person is involved in every transaction. The elected officers should never relegate all functions to a paid manager or, for that matter, to the secretary or the chairman of the Board of Trustees. Periodic checks should be made on the operations, employees and volunteers who handle the business of the Lodge.



The Lodges will almost always have some insurance under the Property Plus Program, but losses of this type are frequently hard to prove in order to make a full recovery. When there is a loss, the Lodge may never find out the proportions of the loss and may never be able to make a claim on the coverage available. This is especially true when the claim is experienced by a badly managed Lodge.

These losses can occur over a long period of time and can come from long-term trusted employees, officers or volunteers. Remember that, if any defalcation for any individuals are discovered (even minor ones), future actions by this individual may not be covered under the Property Plus Program.



## **ANIMALS IN LODGES**

We have recently had several cases where members or employees have their dogs in or around the Lodge premises and a biting incident has occurred.

To date, we have defended the Lodge in these cases and directed civil actions to the owner of the animal; however, the defense is an unnecessary expense. This situation should be avoided.

I can think of almost no situation where a member or an employee should bring any pet to the Lodge premises, except in the case of a needed seeing-eye dog.

## **AUTOMOBILES/TRUCKS/BUSES**

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

- There is no coverage of any sort under the Self-Insured Master Liability Program.
- The Lodge would have to buy local insurance, which is expensive. The Lodge would probably not be able to get more than 1 million dollars 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 assets of the Lodge.
- There is no logical business or efficiency reason that any Lodge should own any vehicles licensed for road use.

## **LIQUOR IN THE LODGE**

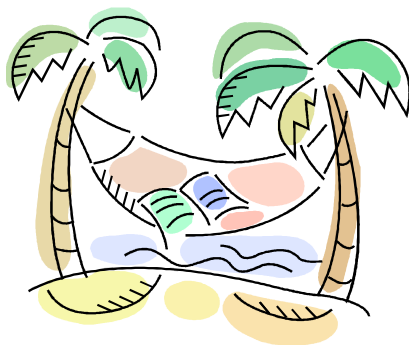
The Order's record, with reference to alcohol related claims is a good one and continues to improve, but all Lodges must remain vigilant. One mistake, one neglectful officer or employee can cause great damage to the Order.

Each Lodge must constantly review its procedures related to the service of this item. Here are some major points:

- Servers, employees and volunteers must be trained (it is recommended that they receive formal training). In some states, it is required.
- Servers must refuse service to anyone who is even approaching intoxication, including any officers.
- Patrons must never be allowed to serve themselves (for example, never have an open service keg).
- Servers must never drink on the job or after their shift is over.
- All applicable liquor related laws must be complied with.
- All Lodges might attempt to include alcohol use by members in the Drug Awareness Program.

## **LODGE ACCIDENT PREVENTION MANAGER**

It is imperative that the accident prevention manager from each Lodge, appointed in accordance with the Statutes of the Order, be active in the safety review of the Lodge on a continuing basis. It must be emphasized to the management of the Lodge that the accident prevention manager is to be included in the planning of the day-to-day operations of the Lodge. Employees must also be informed of their responsibilities as they relate to the accident prevention manager. Safety reviews and the management of the Lodge must not be totally relegated to employed managers. The Lodge managers and the accident prevention manager must be aware and review the actions of the employees.



## AGREEMENT FOR USE OF LODGE FACILITIES



Many Lodges allow others to use their facilities. Of course, this is to be done in accordance with existing requirements of the Statutes of the Order to avoid any violation of the “closed door” policy and to avoid any question about the Lodge being a place of public accommodation. If a Lodge does allow such use on an individual event basis, it is important to have the user sign an agreement that follows \_\_\_\_\_ and makes an attempt to receive evidence of insurance (such evidence of insurance must be mandatory if the user is a corporation or a business entity of any sort). The signing of this agreement will not obligate the user for any claims arising out of the Lodge’s sole negligence, but it will make the user obligated for claims arising out of their event. If anyone rents a portion of the Lodge on a continuing basis, there should be a lease agreement (reviewed by the Lodge’s attorney) that contains appropriate language with an appropriate waiver of subrogation for the Lodge relieving the Lodge of any damage to the property of the leasing party. A party leasing a portion of the Lodge must insure their own property and make no claims against the Lodge, no matter what the cause may be.

In the process of allowing someone to use the Lodge on an event basis or in a lease situation, the Lodge’s leadership should use common sense and not a consideration of money. The Lodge, and the Order in general, does not want any users to damage the good image of the Order. Don’t allow any use by questionable entities, morally questionable events, events sponsored by groups where trouble may be generated or any activity that might result in injury to those attending or other innocent people.

With reference to the serving of liquor, the renter must comply with the policy established by the Lodge (no service to minors, no service to anyone who is or is approaching the state of intoxication). This applies regardless of who supplies the bartenders or the liquor. It is always necessary that the Lodge management monitor this compliance. No open bars or beer kegs are to be allowed.

The following is an agreement (see Page 27 of the Fourth Edition of the “Accident/Claims Prevention Manual”):

### RECOMMENDED INDEMNITY FOR USE OF LODGE FACILITIES

For valuable consideration, the receipt whereof is hereby acknowledged, \_\_\_\_\_ does hereby agree to indemnify and hold \_\_\_\_\_ Lodge No. \_\_\_\_\_ harmless from any and all claims arising out of (description of activities). \_\_\_\_\_ further agrees to provide the Lodge with evidence of the following insurance coverage naming the Lodge as an additional insured for general liability with a separate endorsement reflecting this action with companies satisfactory to the Lodge and with a provision in the policies for thirty days’ notice of cancellation or material change to the Lodge. Such coverage and certificates must be issued without disclaimers or limitations.

COVERAGE	AMOUNT
GENERAL LIABILITY	\$1,000,000 per occurrence <i>(Including products and contractual liability)</i>
AUTOMOBILE LIABILITY <i>(where applicable)</i>	\$1,000,000 per occurrence
WORKERS’ COMPENSATION <i>(where applicable)</i>	STATUTORY

*(Amounts of required coverage might be increased or decreased depending on circumstances.)*

## LET SKILLS FIT THE JOB

In recent months, I have received numerous reports of injury, some minor, some very serious, where older members (as volunteers) have been performing tasks beyond their ability or physical condition.

- Volunteers, ages 83 and 71, injured (one seriously) on a ladder while trimming trees.
- 75-year-old fell from ladder held by 91-year-old repairing building.
- 67-year-old injured when he fell off ladder while doing extensive construction.
- Inexperienced volunteers roofing Lodge, which they accidentally burned to the ground.



I could extensively add to this list, but the point is that Lodge management must manage and control who does what and how it is done.

The Elks can’t survive without its volunteer base of help, but volunteering must be filtered and controlled by common sense.

Good-intentioned volunteers do not have the required skills or who are not physically capable of performing a task can be very costly to the Lodge and the Order in general.

Good management at the local Lodge level must use good judgment about accepting volunteer work and must, on some occasions, reject the volunteer or the project.