

~ ~ STATE ACCIDENT PREVENTION CHAIRMEN ~ ~
INFORMATION
 JUNE 2011



CONGRATULATIONS TO THE CLASS OF 2011

2011 STATE ACCIDENT PREVENTION SEMINAR

In the near future, State Accident Prevention Chairmen will be provided with the request to attend this year's seminar. Newly appointed chairmen will be invited on an annual basis with the remaining chairs to be invited on an alternating basis to be determined.

REMOVAL OF SECONDARY MEDICAL PAYMENTS

Based on the fact that some Lodges have been confused about the impact of this change that became effective 4/1/11, the following should provide a better understanding of how the change affects each Lodge.

Prior to 4/1/11, the Self-Insured Master Liability Program provided "no fault" secondary medical payments, which would pay deductibles and co-payments for individuals who suffered an injury at any Lodge. This payment was made without any reference to questions of negligence on the Lodge's part.

It was decided to terminate this coverage primarily due to the new Medicare and Medicaid procedures, which eliminated the Elks ability to provide any direct payments to injured persons.

The Master Liability Program continues to provide liability coverage to Lodges, which will defend the Lodge from any claims of negligence and pay any judgments or settlements, which may include medical expenses.

Elimination of the secondary medical coverage makes the distinction that claims that include medical expenses may be paid on an adversarial basis meaning that claims can no longer be paid on a "no fault" basis. There will be an investigation to determine whether the Lodge was negligent. If the Lodge was not at fault, no payments will be made.

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NOT-FOR-PROFIT LOSS

It has been reported that a fraternal order has recently had a judgment rendered against them, which could result in the payment of five million dollars. In this case, a drunk driver pled guilty to striking a pedestrian who suffered permanent brain injuries. The drunk driver had been served alcohol at a this fraternal order's local lodge and then went to a night club where they refused to serve her because she was visibly intoxicated.

This is an object lesson for all Elks Lodges - never serve anyone even approaching intoxication!

All servers must be clearly instructed in this regard. Any server (employee or volunteer) who violates this rule must be dismissed.



RELEASE FORMS/INDEMNIFICATION

It has come to my attention that many Lodges conduct events such as car shows, flea markets and other events where groups of people or organizations are allowed to use the Lodge facilities or participate in some sort of an event held by the Lodge. Lodges are also conducting events involving individual participation such as sporting events or other forms of activity. With this in mind, I must refer you to Pages 10-11 of the "Liability Insurance Program" booklet, which is also the Master Liability Program policy. These pages show the requirements for organizations or individuals renting or using the Lodge facilities (see indemnity agreement at bottom of the page). The following are two release forms that can be used to protect the Lodge from claims made by individual participants:



Release for Group Events

I, (participant's name), for being allowed to participate in (event name), agree to indemnify and hold harmless the (Lodge name, number), its officers, employees and members from any claim and/or attorney fees arising out of my participation in this event, except for the sole negligence of the Lodge. I further agree the Lodge is not responsible for damage to my property and waive subrogation on any insurance policy I may have.

Signature

DATE

Release for Individual Participating in Sporting Events

I, (participant's name), for being allowed to participate in (event name), agree to indemnify and hold harmless the (Lodge name, number), its officers, employees and members from any and all claims or injury to myself arising out of my participation in this event.

(If the participant is a minor, a parent or guardian must sign, thereby providing permission for the named minor to participant in the named event).

Signature

DATE

Indemnity for Groups or Individuals Renting/Using/Leasing Lodge Facilities

For valuable consideration, the receipt whereof is hereby acknowledged, _____ does hereby agree to indemnify and hold harmless the (Lodge name, number) from any and all claims, cost of defense or expenses arising out of (description of activities), except for the sole negligence of the Lodge. _____ further agrees to provide the Lodge with evidence of the following insurance coverage naming the Lodge as an additional insured under their general liability policy with a separate endorsement reflecting this action, with companies satisfactory to the Lodge and with a provision in the policies for thirty (30) days' notice of cancellation or material change. Such coverage and certificate must be issued without disclaimer or any limitations:

COVERAGE

AMOUNT

General Liability

\$1,000,000 per occurrence
(including products and contractual liability)

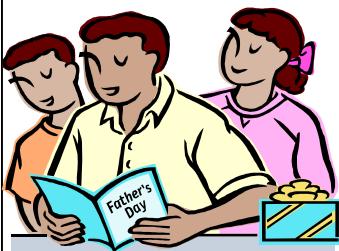
Automobile Liability
(where applicable)

\$1,000,000 per occurrence

Workers' Compensation
(where applicable)

Statutory

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





WEDDINGS/PARTIES/SPECIAL EVENTS

The service of alcohol is the greatest risk to the Self-Insured Master Liability Program, in which the Order assumes the first million dollars of each and every claim. The service of alcohol is especially hazardous at events such as weddings or other types of parties and events, all of which may involve the service of alcohol to the public and frequently are of a commercial nature.

For these types of situations, no additional insured coverage will be provided to other parties. In every case, the sponsor or entity conducting the event or utilizing the Lodge facility must indemnify the Lodge and name the Lodge as additional insured under that entity's insurance policy.

In this type of situation, the Lodge servers (both volunteer and employed) must act with increased vigilance to avoid serving anyone approaching intoxication. Never allow the self-service of alcohol such as beer kegs, pitchers, etc.

Another big issue at weddings are underage persons who attempt to be served alcohol. Lodges must card everyone even slightly suspect and refuse service if there is any question, regardless of apparent proof of age. Lodges should also be quick to cut off service and/or eject any person causing a disturbance.

In all such events, regardless of the size, it is recommended that security be provided, preferably by authorized off-duty police officers.

FIRE SAFETY ALERT (LAUNDERING RESTAURANT LINEN)

It has come to our attention that Lodges should be made aware of a fire marshal's warnings that spontaneous combustion can occur when Lodges do not use a commercial laundry service for cleaning table cloths, napkins, cleaning cloths or any other linens that are greasy.

Of course, this spontaneous combustion can occur prior to washing if these linens are improperly stored, but it can also occur after the cleaning process if it is improperly done. When non-commercial washers and dryers are used with a detergent that is not designated for grease removal, the drying process can result in the linens igniting when stored when improper heat settings are involved. This situation recently occurred at a Lodge with it being reported that similar incidents occurred at other establishments.

If a Lodge does such laundry, it would be wise to consult the local fire marshal. Any detergent used should be checked to establish that it is meant to remove grease. The dryer's heat settings should also be lowered to help

MANDATORY PARTICIPATION IN THE PROPERTY PLUS PROGRAM

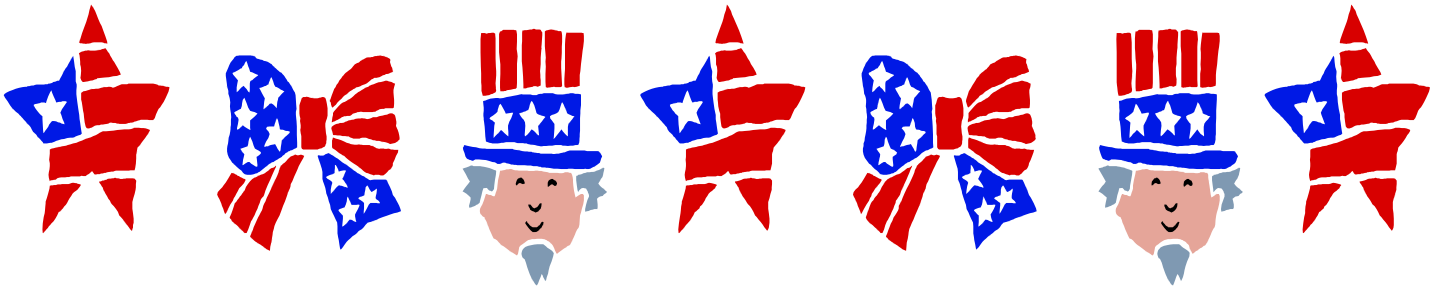
It was brought to our attention that some misinformed persons still don't understand that all Lodge owned buildings must be covered under the Property Plus Program; Section 4.232 of the Statutes of the Order require participation.

Lodges that violate this requirement put their Charters in jeopardy and are still obligated to pay the Property Plus Program's premium assessment.

VOLUNTEERS

Volunteers are a great asset and strength for the Order, but do not let the good intentioned volunteers do work he or she has no experience or knowledge in. Also, considering the fact that a once competent or knowledgeable volunteer may lose their prior abilities over time. Don't let 70, 80 or 90-year-olds do work on ladders or high places and don't let a weekend repairman rewire the Lodge, replace a Lodge roof, etc.





**LIMITING POTENTIAL FOR CLAIM DEMANDS
(RV AND TRAILER UNITS/PARKING)**

It has come to our attention that many Lodges have facilities to accommodate RV's and trailers. This is particularly true during winter months at many of the Lodges located in southern and western states.

Each Lodge should review its policy with reference to safety and should make sure that the Lodge is not accepting responsibility for these units. The Lodge cannot be a guarantor for damage done to these units or for liability claims arising out of these units being parked on the local Lodge's property.

It is suggested that every Lodge have owner of each unit sign an agreement. The following language should be included in this agreement:

Use Agreement for RV's and Trailers for Lodge No. _____

In consideration for being allowed to park my unit in the appropriate area designated by the Lodge, I hereby agree to indemnify and save harmless the Lodge from any and all claims and expenses arising out of my parking or use of the facilities, except for the sole negligence of the Lodge. I further agree that no claim for damage to my property will be made against the Lodge under any circumstances and that any rights of subrogation for damage to my property are waived.

Unit Owner

DATE

It is also recommended that every Lodge post a sign in its parking lot as follows:

Notice

The owner is not responsible for any damage or loss to any vehicle parked at this location. Anyone parking in this facility's parking lot parks at their own risk.

ALCOHOL SERVICE

While the server always must count the number of drinks served to a patron and continually monitor the individual's demeanor to avoid serving a person who is intoxicated or approaching intoxication, the server must also make a critical judgment before serving the first drink. If there is any indication that the patron had been drinking prior to coming to the Lodge, the judgment must be made as to whether the individual is intoxicated or approaching intoxication. The person who has been drinking prior to coming to the Lodge must also be more closely observed as service continues by taking into consideration that there has been a prior intake of alcohol.

Remember that one initial drink served too quickly or without proper judgment may involve the Lodge in a serious occurrence.





BINGO

As we have stated before, a large number of the claims presented involve bingo players, many of which are not members who have other ailments and tend to be quick to make a claim. Furthermore, it seems that the exaggeration of alleged injuries is much more likely. Lodges must be vigilant in this area to reduce claim possibilities.

- Keep all walking areas clean and free from obstruction. Make the aisles wide enough and do not crowd the seating at tables. If they are crowded, people will find a way to trip.
- Maintain control over the process; do not allow pushing or shoving. Discourage the use of more hazardous entrances or exits to control orderly movement. Management must have monitors to control this movement.
- If there are bad weather conditions or hazards that participants might experience when they leave the bingo hall, the management should provide appropriate announcements.
- If other organizations conduct bingo on Lodge premises, the Lodge should control the use in the same fashion as recommended above. Also, the other organizations should indemnify the Lodge, agree to follow safety procedures in regards to crowd control, and name the Lodge additional insured under that organization's general liability policy.

DRIVEWAYS/ENTRANCES/EXITS

In recent months, it has come to our attention that, in some jurisdictions, the court might hold a Lodge responsible for accidents occurring at the entrance/exit if the Lodge has created a hazard or has not attempted to reduce the possibility of such an occurrence. Generally speaking, such cases may be viewed as bad law; however, we should not ignore the existence of such cases.

Each Lodge should review the configuration of the access junctures to determine how this area can be made as safe as possible. Warning signs or signs showing direction should be used where possible. A stop sign would seem to also be useful. If the view of oncoming traffic is blocked in some way (i.e. trees, hedges, etc.), removing or altering these obstructions might be in order.

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.

PICNIC AREAS

Many Lodges have outdoor areas adjacent to the Lodge or at a remote location that are used for picnics or other outdoor events. The Lodge must not neglect these areas when doing safety reviews.

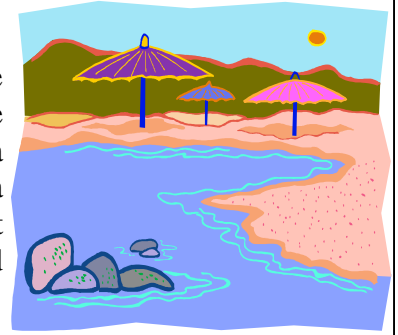
In the last number of years, many claims have been generated from these outdoor areas. The following are some critical inspections that should be made:

- Make sure that benches, tables or any other equipment are in good condition. There have been a number of claims presented due to the collapse of such equipment.
- Make sure that all walking areas are level and free of obstruction. If this cannot be done, block off such areas and place warning signs or devices.
- If there are playing fields, inspect the fields to make sure there are no holes or other unmarked hazards.



FREQUENT CLAIM INCIDENTS

- **Chairs:** Lodges continue to have chair incidents. Sometimes, one Lodge will have a string of incidents where a type of chair has problems or where their equipment is worn beyond repair. The Lodges must inspect chairs on a frequent basis and must dispose of worn out chairs (all Lodges should have a record of the chair's manufacturer). The issue of replacement cannot be out off to a later time on a constant basis. It is important that any chair involved in an incident be kept out of service while awaiting an adjustor's review.
- **Dance Floors:** We continue to get accidents from the use of dance floors. No Lodge should use or allow any person to use wax or any other substance on dance floors except for nonskid products that are specifically designed for such use and applied by a knowledgeable person. The best solution is the installation of a nonskid dance floor that requires no treatment.
- **Stairways/Entranceways:** A constant review of accident potentials must be made with regards to stairways and entranceways. The Lodge must monitor maintenance and establish all possible means to warn individuals of any hazards or perceived hazards. Procedures for all weather conditions must be established and followed.



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.

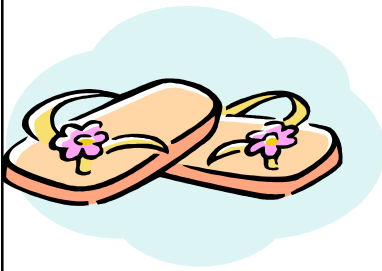
Lodges with such an exposure should also make sure that the Lodge's Workers' Compensation policy (obtained locally) includes appropriate endorsements that provide coverage and defense under Federal or state laws for work related claims arising out of allegations of injury in maritime or dock circumstances.

SWIMMING POOL/SPA DRAINS

In the event that there are Lodges that have not already been apprized or contacted on this issue, there has been a recall on many pool drain covers. In 2007, regulations for the installation of new types of covers were enacted. Now, many of these installed drains require retrofitting. If any Lodge has not already done so, they should contact their pool supply source. If anyone has questions, please call 1-866-478-3521 or go to www.apsp.org/draincoverrecall.

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 to all Lodges to install sprinklers when building a new Lodge because the small added construction cost is offset in a few year 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.