

CONFERENCE GUIDE TO PURCHASING INSURANCE

NCAA has asked NFP Property & Casualty Services, Inc. (NFP) to prepare the following insurance considerations for college conference administrators to utilize when purchasing insurance. Please note that this document provides suggestions and considerations only and may not address all exposures of a college conference. Conference administrators should work with their chosen insurance advisors to determine the type, level, and scope of insurance coverage necessary to meet their particular circumstances.

FINANCIAL STRENGTH OF INSURER

An occurrence today may result in a claim several years from now. Therefore, it is important that the insurer you select has the financial strength to pay claims both now and in the future. The A.M. Best Company provides insurance company ratings to help evaluate the strength of an insurer. NFP recommends its Sports/Entertainment clients to work with insurers with a minimum A.M. Best Rating and Financial Size of A- (Excellent), VII. An insurer's A.M. Best Rating can be verified via www.ambest.com, or by requesting this information directly from your insurance advisor.

SELECTING LIMITS

The type and number of activities that a conference organizes and the extent of the conference's direct involvement in these activities affect the conference's exposure to loss. The decision on how much insurance to carry should be discussed with the conference's insurance advisor who may provide information on limits carried by organizations of a similar size and nature. Unfortunately, it is not possible to know with 100% certainty what will prove to be an "adequate" limit because of the unknown factors associated with liability. A minimum limit standard is at least \$1,000,000 per occurrence/loss. This coverage amount is also the minimum amount typically required in third-party contractual arrangements.

OTHER CONSIDERATIONS

It is important to forever retain all occurrence-based policy documents (e.g. Commercial General Liability, Crime, Workers' Compensation policies). Occurrence based policies will respond to claims when the loss occurred (not when the loss was reported). For example, if a claim is reported today for a loss that occurred ten years ago, the policy that was issued ten years ago will respond rather than the policy that is in effect today.

It is of the utmost importance that you accurately complete all of your insurance applications and reveal all applicable exposures, including all sports applicable to your conference. Failure to disclose information may result in denial of a claim. Keep your insurance brokers/carriers apprised of any new developments relating to your conference.

COMMERCIAL GENERAL LIABILITY (CGL)

Commercial General Liability policies are designed to cover your organization with respect to claims of bodily injury, property damage, and/or personal/advertising injury liability arising out of your business operations.

CGL policies provide either claims-made coverage or occurrence-based coverage. An “occurrence” policy offers permanent coverage for incidents that occur during the policy period. A “claims-made” policy covers claims that are made (reported) during the policy term, and will cover claims after the coverage period ONLY if the insured purchases extended reporting period or “tail” coverage. More often than not, contracts will require an occurrence-based CGL policy.

A standard CGL policy will provide coverage for the operations of a college conference, but there are certain exclusions and limitations that may restrict important coverages. The following provides a description of notable coverages you may consider, exclusions or limitations to look for, and coverage enhancements you may want or need.

COVERAGE	DESCRIPTION
COMMERCIAL GENERAL LIABILITY NOTABLE COVERAGES	
Participant Legal Liability	Confirm with your insurance advisor that the conference’s policy provides coverage for claims of bodily injury resulting from sports participation (typically referred to as “participant legal liability”). This is a primary source of exposure for a college conference, so you want to confirm that coverage is in place and that you understand any restrictions or limitations that apply.
Terrorism	Certified acts of terrorism are eligible for coverage under TRIA. Certified acts occur in the U.S. and are committed by someone acting on behalf of a foreign person or foreign interest. Non-certified acts do not meet the criteria for certified acts (for example, a domestic act by a U.S. citizen). Non-certified acts do not trigger federal reimbursement under TRIA. If you wish to have coverage for losses related to a terrorist act, you should accept coverage for certified acts of terrorism offered by the insurer. Commercial insurers must offer coverage for “certified acts of terrorism” but are free to either cover or exclude “noncertified acts of terrorism.”
Additional Insureds	Many conferences have sponsorship relationships or venue use agreements that require the conference to name a third party as an additional insured. Determine in advance whether there will be premium implications for such requests. Also determine whether the policy requires a written contract or agreement in order to provide additional insured status.
COMMERCIAL GENERAL LIABILITY EXCLUSIONS OR LIMITATIONS TO LOOK FOR	
Sport-specific or activity-specific exclusions	If the policy includes sport or activity-specific exclusions, be sure that they are not for any sports or activities with which your conference is involved (for example, a policy could specifically exclude claims related to the use of a javelin).

COVERAGE	DESCRIPTION
Concussions	Insurers in general are adding concussion exclusions on liability policies, even on sporting activities where concussions are not prevalent. Conferences should share its concussion protocols with insurers and also explain what is being done to mitigate the problems relating to concussions. Consult with your insurance broker to explore options to avoid a concussion exclusion on your liability policies.
Designated Operations or Activities Provision	Insurers may limit the scope of coverage by specifically listing what the policy covers. If your policy contains such a limitation, you must ensure that the wording is broad enough to encompass all your regular day-to-day business operations plus any special events you conduct. If possible, this type of limitation should be avoided.
Fireworks	Some policies contain exclusions or limitations with respect to fireworks. If fireworks or pyrotechnics are a part of any conference activities, you should evaluate the coverage provided to ensure that it is appropriate for your situation.
Abuse/ Molestation	If the conference organizes or operates activities that involve youth, you may have exposure with respect to claims of abuse or molestation and should confirm that your policy provides coverage for such exposures. Additionally, you may be required to carry this coverage if you plan to utilize a third party's premises where youth are present (for example, you may wish to hold a practice at a local high school, and the high school requires you to have abuse/molestation coverage because the high school has youth on its premises).
Damage to Property in your Care, Custody, Control	Standard Commercial General Liability policies exclude coverage for liability you incur as a result of damage to personal property in your care, custody, or control. An example of this exposure is if your conference is storing another individual's or organization's equipment. If this situation applies, it is prudent to verify with the equipment owner that adequate property insurance is maintained. If the conference has exposure in this area, it should be discussed with your insurance advisor to determine the best approach for insurance.
GENERAL LIABILITY COVERAGE ENHANCEMENTS YOU MAY WANT OR NEED	
Sports Trainers Liability	If a conference utilizes or employs trainers and wants to provide liability coverage for these individuals, it is important to discuss whether the insurer offers a sports trainers endorsement to provide coverage for medical services provided by trainers (standard policy language excludes coverage for individuals who provide professional medical services).
Worldwide	Standard policy language applies only with respect to suits brought in the United States, its territories and possessions, and Canada. If the conference conducts international activities, the conference may wish to purchase coverage that applies to suits brought outside the standard coverage territory as well.

COVERAGE	DESCRIPTION
Watercraft Extension	If any non-owned watercraft over 26 feet in length are operated by, rented, chartered or loaned to the conference (such as for a crew event), the standard general liability policy will need to be endorsed to provide coverage for this exposure. Owned watercraft would require a separate policy.
Amend Bodily Injury Definition	The insurer may be willing to broaden coverage by modifying the standard definition of bodily injury to include mental anguish, mental injury, shock, fright, or humiliation associated with a bodily injury.
Waiver of Transfer of Rights of Recovery Against Others to Us	This endorsement does not increase coverage, but it confirms that you and your insurer acknowledge that you have waived your rights of recovery against another party. If you waive your rights of recovery against another party, you are also waiving the insurer's ability to recover from that party. Some insurers charge additional premium for this endorsement. However, the endorsement itself does not actually increase exposure to the insurer; the standard, unendorsed CGL policy form allows you to waive your rights of recovery against another party without jeopardizing coverage as long as it is done before a loss. Lease agreements with facilities may require you to waive your right of recovery against them, and when you sign a lease with this language, you are also waiving the insurer's right to recover. The facility may require you to provide evidence from the insurer, via endorsement, that rights of recovery against them have been waived. Talk to your insurance representative about the best way to work with your insurer on this item.
Liquor Liability	Standard Commercial General Liability forms typically include coverage for "Host Liquor Liability," but exclude alcohol-related losses if the insured is involved in "the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages." While college conferences may not do this as a primary business function, coverage is sometimes restricted in the case of nonprofit and other organizations that may sell alcoholic beverages in connection with fundraising or other organizational activities (such as a conference championship event at which alcohol is sold). In this case, full Liquor Liability coverage is necessary. As part of discussions with your insurance advisor, you should discuss events where alcohol will be sold or provided to determine whether full Liquor Liability coverage is needed, or if the Host Liquor Liability coverage provided under your CGL policy is sufficient. It is also important to verify that concessionaires and vendors serving alcohol are properly licensed and insured with Liquor Liability coverage, and the conference is named as additional insured.
Knowledge of Occurrence	Many insurers are willing to endorse the policy to say that the insurer shall not consider the conference to have knowledge of a claim until the conference commissioner or a senior officer of the conference has been notified of the circumstances in writing. Through this endorsement, the insurer acknowledges that the conference commissioner must know about the claim in order for it to be reported.

DIRECTORS AND OFFICERS LIABILITY (D&O)

Directors and Officers Liability policies are designed to cover an organization and individuals for claims alleging wrongful acts. There are many different policy forms that provide the same basic coverage but may have enhancements or exclusions that are of particular interest to a college conference. The following provides a description of core coverage, exclusions, or limitations to look for, and coverage enhancements you may want or need.

COVERAGE	DESCRIPTION
DIRECTORS & OFFICERS CORE COVERAGE	
Insureds	Coverage should include past, present, and future directors, officers, trustees, employees, committee members, and volunteers. In addition, some policies extend coverage to spouses of these individuals in the event they are brought into a lawsuit. It is important that the correct entity be named on the Declaration pages, so that all subsidiaries are also covered under the policy. If not, they will need to be listed separately in order to be covered.
Non-Monetary	Coverage should apply to claims for which monetary and non-monetary demands are made. It is important to confirm that the policy includes both triggers in the definition of Claim. Non-monetary claim examples include administrative proceedings or demands for injunctive relief. The defense costs associated with such claims could be significant, as this could also include Antitrust or eligibility related matters.
Employment Practices Liability (EPL)	Most Not for Profit D&O policies contain EPL Coverage. This can also be purchased on a separate policy, should you not wish to combine the limits. In any case, this coverage should apply to claims brought by employees or former employees relative to employment practices (such as wrongful termination, failure to promote, age discrimination, etc.). It should also contain coverage for claims by third parties, such as vendors or guests.
DIRECTORS & OFFICERS EXCLUSIONS OR LIMITATIONS TO LOOK FOR	
Breach of Contract	Many D&O policies exclude breach of contract because it is an exposure that is considered to be within the control of an insured. However, under the EPL coverage section, there may be limited coverage for employment practices claims alleging breach of a written or implied employment contract.
Punitive Damages/Multiplied Portion of Damages	The policy may exclude coverage for punitive damages or the multiplied portion of damages (e.g. treble damages) and in certain jurisdictions these exposures are uninsurable. However, the policy should provide this coverage where it is allowable by law, under most favorable venue language in the policy form.

COVERAGE	DESCRIPTION
Wage & Hour	Most EPL policies will exclude coverage for Wage and Hour claims, but it may be possible to purchase a sublimit from some carriers, to address this issue. Wage and Hour claims could include allegations of Fair Labor Standard Act (FLSA) violations. It is possible that a conference could be named in such a lawsuit, in addition to other plaintiffs, such as a member institution and NCAA.
Insured vs. Insured	If the policy excludes claims brought by one insured against another insured, it should clarify that the exclusion does not apply to employment practices.