

## DIRECTORS AND OFFICERS INSURANCE FOR PCA AND REGIONS

Our D&O insurance provides coverage for both National and Regional directors, trustees, officers, employees, volunteers, and staff members, including any executive board members and committee members. Additionally, the spouses of these persons are covered as well, but only in their capacity as spouses of the insured persons and not for any of their individual acts, unless of course the spouse is acting in an insured capacity with National or the Region.

The policy provides coverage to each Region for liability up to \$1 million per insured claim. Additionally, there is a \$1 million per Region aggregate limit of liability for each policy year. That is, during each policy year no individual Region may have claims in excess of \$1 million. Additionally, the cost of defending these suits is covered by the insurance company over and above the limit of liability.

Directors and Officers insurance generally provides coverage for intentional actions taken by the directors, officers, etc. when someone else thinks these actions are wrong and sues. These are intentional, willful actions, errors, or omissions that may result in some type of damage other than bodily injury and property damage. As you know, PCA carries coverage for negligent acts that result in bodily injury and property damage under its Motorsports Liability program with limits of liability up to \$10 million.

While it is not possible to provide you with each situation that might be covered under a D&O policy, we have set forth below examples of the types of things that might be covered. As you read through these, keep in mind that what constitutes a wrongful act is determined by the plaintiff, up until the Court or jury renders a verdict. A dismissal of the case or judgment against the plaintiff, that is, a determination that the alleged wrongful act was not wrongful at all, can still result in substantial legal fees owed by the defendant. These legal fees would be paid by the insurance company.

Examples:

- A Region member, volunteer, contractor, event participant or family member is exposed to a joke that they consider to be sexual harassment and sues the Region Board of Directors for not enacting a policy prohibiting such action or otherwise preventing such action.
- A DE student takes off five days from work to travel to and participate in the DE. He commits enough unsafe acts during the DE to be sent home and sues the Region Board and the DE committee for not adequately

informing him of the safety rules, arbitrary or inconsistent enforcement of the rules, or discrimination. He seeks damages for travel and school expenses, car preparation costs and lost work.

- The Region newsletter publishes an unflattering review of a local repair or detailing shop and the Editor and Region Board are sued for libel.
- The Region website uses copyrighted materials without permission, and the Webmaster and Region Board are sued for copyright infringement.
- A catering company is contracted for a large event. The event is cancelled, but no one on the Region Board tells the catering company. The catering company sues the Board members in addition to the Region believing that they may have money that the Region does not.
- An autocross entrant is denied access to the event because his car fails the tech inspection. He sues because the Region failed to provide the inspection requirements ahead of time or failed to provide inspection services.
- A Region officer with check signing privileges for the Region pays the deposit for a hotel banquet room with his own funds. After the event the hotel sends a refund for the deposit made out to the Region and the Region officer endorses it to himself and deposits in his personal account, then later writes a check for the amount to the Region. He has improperly, albeit inadvertently, commingled personal and nonprofit corporation funds. He is sued by another Region member for this error.
- A prospective advertiser is denied the opportunity to advertise in the Region newsletter and sues the Editor and Region Board because they have not established an advertising policy, or they have not fairly applied their policy, or because they are discriminating against the advertiser due to race, creed or religion.
- A Region Officer allows a friend with a for profit autocross club to borrow the Region's autocross timing equipment for free and is sued by a Region member for misuse of Region assets.
- A DE instructor has exhibited a pattern of poor judgment in previous schools so the Region refused to allow him to instruct for them. He sues the Region Board for discrimination.
- A Region Board member fails to apply for sponsorship money in time and as a result, the Region loses thousands of dollars in sponsorship. He is sued by a Region member for loss revenue to the Region.

Should you have any questions in regard to the foregoing matters, please do not hesitate to contact me for further discussion. Additionally, should you at any time believe that a situation has arisen that may give rise to a claim, please advise me immediately. If a claim is made or a suit is filed you should provide me with a copy as soon as possible.