INSURANCE, LIABILITY RISKS AND PROTECTION
For
WISCONSIN LAKE ORGANZATIONS

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The document may help you decide if your organization needs insurance. It was written and reviewed for the Wisconsin Lakes Partnership

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Litigation has become a way of life in this nation. If we feel we have been wronged we are quick to seek a legal remedy. The upshot of this situation has been an impressive increase in the need for, and cost of, insurance.

LIABILITY EXPOSURE

While there have been few reported lawsuits brought against lake organizations, the exposure to liability claims and litigation is very real. Whether it is a voluntary unincorporated association, a non-profit corporation, or a formal government entity, such as a lake management district, the kinds of liability exposure faced by a lake organization are essentially the same. However, the legal form of the organization will have a significant impact on the available immunities and defenses to litigation. Liability exposure for a lake organization usually revolves around claims that are brought by non-members of the organization. Worker's compensation laws can also create a liability for the organization if an on-the-job injury occurs to its employees.

Worker's Compensation

Wisconsin worker's compensation laws state that an employer is responsible for an employee's medical bills and a percentage of an employee's lost wages due to an on-the-job injury (Chap. 102, Wis. Stat.). In order for the worker's compensation law to apply, there must be an employer-employee relationship (Sec. 102.03 Wis. Stat.). If wages are not paid, liability can be avoided for all forms of lake organizations except

public inland lake protection and rehabilitation districts (lake management district) organized under Chapter 33 of the Wisconsin Statutes. In order for worker's compensation laws to apply to a lake organization, it must usually employ three or more people, or in any one calendar quarter, pay wages of $500 or more (Sec. 102.04 Wis. Stat.). Therefore, voluntary lake associations and associations which have incorporated can eliminate the possibility of facing worker's compensation claims by relying on the services of volunteers or private contractors, rather than employees. If a volunteer is injured, the volunteer will have to rely on his or her own medical insurance and disability insurance. A private contractor should provide worker's compensation insurance for its employees.

A lake management district cannot avoid worker's compensation liability exposure to its elected commissioners. If the governing body of the municipality which establishes the lake management district performs the function of the board of commissioners, that municipality, in all likelihood, provides the necessary workers compensation insurance for the commissioners. In cases where the lake management district has chosen self-governance and elects three of its own commissioners to the board, the commissioners are entitled to worker's compensation benefits for injuries sustained on the job. While the likelihood of a board member making a claim is small, a simple slip and fall at the board meeting could result in substantial medical expenses for which the district would be liable.

Liability for Accidents

Accidental injuries can create significant exposure to litigation for lake organizations. A claim can be brought for injuries accidentally sustained while involved in any of a wide variety of lake management activities. Lake organizations may be using aeration, placing buoys, owning dams, using cars and boats, or sponsoring water sport activities. These sorts of activities have the potential for accidents and liability if the lake organization is involved in them.

There have been numerous claims in Wisconsin where swimmers have been run over by speed boats. Such injuries can be extremely severe, if not fatal. Another common form of injury is paraplegia or quadriplegia as a result of people diving into shallow water. While many such claims have been brought in Wisconsin, the author is aware of only one being brought against a lake organization.

Severe personal injuries create liability exposure for lake organizations because plaintiff's attorneys are often adept at taking a severe injury case and "creating" liability. This is done by thoroughly studying every aspect of the lake organization's activities and using any small error, combined with jury sympathy for the severely injured person, to create a serious risk of liability exposure. Many of these cases have been successfully defended. Whether or not the lake organization successfully defends the lawsuit, the costs of litigation can be substantial. This encourages what is known as a "nuisance-value settlement," where the defendant will pay the injured party an amount approximating its estimated attorneys' fees and court costs. This is done to promptly

resolve the claim as an economic matter, without much regard for what a jury would ultimately find.

Consider the following case:

- *In the mid-1980s, a young man attended a lumberjack festival. After a full day of partying and drinking beer, he decided to dive into the pond used for log rolling contests in order to wash the spilled beer off of him. He got on a platform 56 inches high and dove head first into 22 inches of water. He was permanently paralyzed from the neck down. At the hospital, his blood alcohol level was found to be .19. His attorney sued the Chamber of Commerce, which sponsored the Lumberjack Festival and the landowner who had donated his premises to the Chamber of Commerce for use during the festival. The litigation dragged on for five years. Towards the end of the process, the Chamber of Commerce was dismissed from the litigation. Fortunately, the Chamber found a lawyer to represent it at no charge. The landowner, who had allowed the festival to use his property for free, was also dismissed from the litigation by the trial court. Then the appeals started. The landowner's insurer paid $25,000 as a nuisance-value settlement in an effort to terminate further litigation in the Court of Appeals and the Wisconsin Supreme Court.*

While the defendants were absolved of liability, significant litigation costs had been incurred. These kinds of claims will be made even if there is highly questionable liability. Plaintiffs and their attorneys are willing to take the risk with the hope that a sympathetic judge or jury will allow a substantial recovery for a severely injured person, almost regardless of liability. An accident resulting in paraplegia or quadriplegia can be worth several million dollars.

The cost of defending a lawsuit, however frivolous, is almost never recovered. A successful defendant in litigation is entitled to an award of statutorily defined court costs. However, these court costs are only a small fraction of actual defense costs incurred. For example, recovery of attorney's fees incurred in successfully defending a lawsuit is limited to $100. While the courts have the authority to award reasonable actual defense costs where a frivolous lawsuit is brought, the courts have rarely done so, even in most flagrant situations.

Contractual Liability

A lake organization should also consider the possibility of litigation when entering into contracts with third parties. A typical contract might be for aquatic plant harvesting, a dredging project, or catering a picnic. A properly drafted contract will define responsibility and liability exposure. Trying to save money by not having a lawyer review a proposed contract can end up in dilemmas. Vague and ill-defined contracts create room for debate and litigation. Even well-defined contracts, if not carefully managed, can create problems.

Consider the following case:

- *A municipality engaged in a river dredging project. It hired an engineering firm to study the situation and draw up the necessary plans and documents so that contractors could bid on doing the actual work. The engineering firm had the municipality sign a contract which thoroughly defined, and severely limited, the municipality's remedies in case of a dispute over the quality of the engineering firm's work. When it came to signing the contract with the company that was actually going to do the dredging work, the municipality did not retain a lawyer and used a form contract where certain blanks had to be filled in. Unfortunately, the blanks were not filled in correctly.*

  After the dredging contractor finished its work, it made a claim for full payment. The engineering firm which surveyed the river bottom claimed that only three-fourths of the dredging had been finished. The municipality refused to pay any more than 75 percent of the contract price, based upon the engineering firm's calculations. The contractor sued the municipality which was powerless to involve the engineering firm in the litigation due to the firm's very tightly drafted contract. The municipality was stuck with defending the engineering firm's work before a jury. The jury concluded the firm's calculations were wrong and that the contractor was entitled to full payment.

Better drafting of the municipality's contract with the dredger would have either prevented the lawsuit from being brought, or would have required the engineer to step in and defend its work, at its own expense. The municipality would have avoided an adverse jury verdict and legal defense costs by spending a far smaller amount of money on an attorney to review the contract documents before anything was signed.

Civil Rights Liability

Lake management districts, because they are a government body, also face limited exposure in another area. This area is civil rights litigation based upon allegations of violating a person's constitutional rights (Chap. 42 U.S. Code, Sec. 1981, 1982, 1983). While the likelihood of such a lawsuit being brought is very small, the cost can be substantial. Civil rights litigation differs from most other kinds of litigation because it allows the prevailing party to recover reasonable and actual attorney's fees. State law limits judgments against lake management districts to $50,000 (Sec. 893.80 Wis. Stat.), but this state limit does not apply when federal constitutional rights are involved.

Employers, whether lake management districts, non-profit corporations, or voluntary lake associations, have certain responsibilities to protect the constitutional rights of their employees. While responsibilities of an employer are limited compared to that of a lake management district, care should be taken to not discriminate against an employee because of race, color, religion, national origin or ethnicity.

The exposure to paying the plaintiff's attorney's fees may be greater than the exposure to the claim itself. The law has been drafted in this fashion to encourage people to assert their constitutional rights and have those rights protected. A civil rights claim can be made against the employees or board members of a lake management district, and the district will be ultimately responsible (Sec. 895.46 Wis. Stat.). Such a claim is based upon an alleged violation of a person's constitutional rights. For example, people are entitled to the preservation of life, liberty and property, without undue infringement by the government. The courts have construed such rights to protect people from government employees who recklessly disregard their responsibilities to private citizens.

There are numerous ways that civil rights litigation can occur: when employees are allegedly improperly terminated, when landowners have had the use of their property unreasonably restricted by the passage of zoning laws, and where discrimination has occurred. Lake management districts have limited regulatory authority and it is usually the governing municipality which has to enact any laws or ordinances applicable to the district. Even so, it is important that a lake management district always be aware that it is a governmental entity which has been formed with its purpose and intent being one of acting in the best interests of its members and the public.

WHO CAN BE SUED

Individuals

People often have the misconception that because they work for someone else, they are not personally responsible for any injuries they accidentally cause. **It is important to note that if an accident happens, an individual is always responsible for his or her own acts.** This is true whether the person acts alone, on behalf of a corporation, voluntary lake association, lake management district, or otherwise. The organization on whose behalf the person acts is probably going to share in the responsibility, but this does not eliminate direct liability exposure for the person who negligently causes an accident.

Let's say that a person driving to the store to pick up food for the lake organization's summer party is responsible for injuries that occur in a car accident. The lake organization will probably share exposure because the automobile driver was acting on behalf of the organization at the time of the accident.

Non-Profit Corporations

The formation of a corporation or lake management district insulates those members who are not personally involved in the activity from any personal responsibility. For example, the officer of a non-profit corporation who solicits a volunteer to do the grocery shopping for the annual picnic will have no personal

responsibility for the car accident which occurred when the volunteer is driving to the store. However, the non-profit corporation will be responsible, and its assets and insurance policy will be exposed.

Lake organizations can be sued for the injuries caused by their members when the members are acting on behalf of the lake organization. Consider the following:

- *In the early 1980's, a snowmobile club formally incorporated pursuant to the laws of the State of Wisconsin. The club engaged in the development and grooming of snowmobile trails in order to promote tourism. The club was a large organization and had significant assets such as a bank account and trail grooming equipment. A new trail was being cut through the woods and was not yet officially open to public. The trail was still in rough condition and no traffic control signs had been posted. A group of snowmobilers ventured onto the unopened trail. A person operating a snowmobile crossed a driveway on a blind corner at the same time that the homeowner was driving home. In the resulting accident, the snowmobile operator was paralyzed for life on the right side of her body and a major lawsuit ensued. The lawsuit blamed the person who was responsible for placing traffic control signs as well as the snowmobile club. Early in the litigation, the club concluded that it would be out of business if the lawsuit was lost. The person who was responsible for placing the signs was retired and living on a very modest income. It was apparent that he was uncollectible and the club's assets would have to be used to pay any adverse judgment. Fortunately for the club, the United States Court of Appeals ruled that neither it nor its employees had any responsibility for the accident. A contrary result would have had devastating financial responsibility for the snowmobile club and its employee who had been developing the trail.*

Voluntary Lake Associations

To our knowledge, few lawsuits have been brought against unincorporated associations, although cases resolved at the trial court level are very difficult to research. There are no statistics to validate these findings because insurance companies do not keep data specifically relating to claims against unincorporated associations. Typically, only cases appealed to a higher court are thoroughly reported and cataloged so that they can be used as precedent. Due to the lack of reported cases, this research included not only voluntary lake organizations, but also other voluntary associations and volunteers in general. While there are few reported cases, it is important to recognize that **a voluntary lake association can be sued.**

In initiating a lawsuit against a voluntary association, the old legal standard required each individual member to be named as a party. The more modern view is that a voluntary association can be sued in its own name to eliminate the inconvenience of naming each member of the association. While no one wants to be named in a lawsuit, the major concern is who has financial responsibility for an adverse verdict.

Individual members of a voluntary association do not, merely by virtue of their membership, subject themselves to liability for injuries sustained by a third party. Liability can only attach to those who are shown to have actively participated in the affair which was a substantial factor in causing the resulting injuries.

If a voluntary association is found to be liable, its assets may be used to pay the judgment. However, this does not make each member liable for the acts of the association. Individual members of an unincorporated association will be personally liable for negligent conduct which they individually commit or participate in. They may also be liable for negligent conduct of others when they authorize or direct such events. Consider the follow-up case from Ohio:

- *Members of an American Legion Post organized a social affair of the Legion. The social activity occurred in a building where the heating system leaded carbon monoxide and caused the death of a person. The court ruled that the American Legion was not liable and that its members were not liable unless they actively participated in the organization of the affair and knew or should have known of the defective condition of the furnace.*

Lake Management Districts

Lake management districts can be sued, as can any other governmental entity. The officers, board members and employees of the district can also be directly sued. Such officers, board members and employees cannot be sued for the liability of the lake management district, but only for their own individual actions. Officers, board members or employees who are sued for their own actions, while acting within the scope of their authority as an officer, board member or employee, have protection from personal liability. Wisconsin Statutes 895.46 and 62.25 require the lake management district to pay any judgment or award against them, plus the costs of defending the litigation.

Directors and Officers Liability

Officers, directors and board members can be sued by members of their own organization. Officers, directors and board members have a responsibility to act in the best interest of the members of the organization. Members can sue those in charge of an organization upon allegations of mismanagement. Mismanagement can occur where interests of a minority number of the members is not being given due consideration.

Officers and board members of lake management districts can also be sued, and fined, for not following Wisconsin law regarding the operation of a government body. Board members and officers need to understand their responsibility and follow the

statutes when doing all types of district business like keeping records, publishing notice of public meetings, and holding closed meetings.

In the not-too-distant past, people were reluctant to serve as officers or directors of non-profit corporations because of the potential that a member of the corporation would bring a suit alleging improper management of the corporation. This director's and officer's liability exposure was addressed by the Wisconsin Legislature. In 1987, laws were enacted which afford substantial protection to directors and officers of non-profit corporations against claims that they have not exercised good judgment in managing the affairs of the corporation (ISee generally Wis. Stats. 181.0855). Unless the officer or director intentionally fails to fairly deal with the corporation, violates a criminal law, or improperly personally profits from a transaction with the corporation, no lawsuit can be brought. Similarly**, a Wisconsin statute provides limited immunity to volunteers who provide services to the non-profit corporation, without compensation (Wis. Stat. 181.0670)**. Such a volunteer cannot be sued, with a few exceptions. Exceptions include the commission of a criminal act; willful misconduct; and, status as a director or officer, an act or omission for which compensation was given and negligence in the practice of a profession, trade or occupation that requires a credential or other license.

Enforcement of Judgments

Wisconsin Statute 0117 requires that any final judgment entered against a Lake Management District be added to the next tax levy. While non-profit corporations and voluntary lake associations cannot be forced to raise money to pay an adverse judgment, they can be required to use their assets to satisfy the judgment. Individuals who have a judgment entered against them will be responsible for using personal assets or insurance coverage to satisfy the judgment. Any lake organization can use its own financial resources to satisfy a judgment against one of its members, if it so chooses. On the other hand, if the lake organization is found to be legally responsible for the improper and unapproved acts of one of its members, it has a right to seek recovery for any expenses incurred from the member who caused the damages.

PROTECTION AGAINST LIABILITY

In spite of all the apparent pitfalls and exposures to litigation, Wisconsin law does provide several protections against liability. Some of these protections cannot be enforced until a complete jury trial is held, while others can be enforced by the judge in the preliminary stages of the litigation. Some defenses exist for lake organizations and their members regardless of the legal form of the organization. **However, a lake management district which is formally organized pursuant to the Chapter 33 of the Wisconsin Statutes enjoys the most protection.**

Lake Management District

A lake management district's liability exposure, as well as that of its officers, officials, agents and employees, is generally limited to $50,000 (Wis. Stat. 893.80). One

notable exception is a claim for violation of a person's constitutional rights. In such a situation, there is no limitation on the dollar exposure. Another exception is in the case of an automobile accident, the liability cap is raised to $250,000 (Wis. Stat. 345.05).

Another important immunity for a lake management district is that the discretionary acts of its officers or officials cannot be questioned in the courts. This is known as quasi-judicial or quasi-legislative immunity. Essentially, Wisconsin wants to allow public officials to exercise their best judgment in carrying out the operations of the district, without fear of having those judgments questioned in a courtroom. For example, if the lake management district chose to spend its money on buoys to protect a swimming area, no one should be able to challenge that decision in court or content that additional buoys had to be purchased to protect a second swimming area. On the other hand, a lake management district is not immune from suit when it is carrying out a "ministerial duty." Once a lake management district makes a decision, the implementation of that decision must be carried out in a manner which is reasonably prudent.

Let's go back to the example of the swimming buoys. Once the decision is made to place the buoys in the spring and remove them in the fall, the person doing the work must act with reasonable prudence. If a boat operator removing one of the buoys is involved in a boating accident, liability can attach for negligent operation of the motor boat. Such a lawsuit has occurred in Wisconsin, and the lake management district was named as a defendant in the litigation.

Immunity for Recreational Activities

An important immunity was created by the Wisconsin Legislature approximately twenty years ago. Wisconsin passed a law which creates immunity from liability when a "recreational activity" is involved (Wis. Stat. 895.52). A "recreational activity" is statutorily defined as any outdoor activity undertaken for the purpose of exercise, relaxation or pleasure. It includes such activities as fishing, picnicking and water sports. An "owner" of property is not liable for any injury to a person engaged in a "recreational activity" on the owner's property. An owner is defined not only as the person who owns the land, but also includes a governmental body (i.e., a lake management district), non-profit organizations, and most voluntary lake associations which lease or occupy the property in question. This statute provides great protection to lake organizations engaged in recreational activities. It also can be a substantial encouragement for private property owners to allow lake organizations to use their property for recreational activities without fear of being responsible for accidents.

While the recreational immunity statute can be successfully used by lake organizations, it must be carefully applied. For example, lake management districts do not have the immunity protection of the recreational activity statute if an admission fee is charged for spectators. Another example of where caution should be exercised is with private property owners who collect more than $2,000 per year for the use of their property in recreational activities. A payment received by a private property owner from the governmental body, or a written "recreational agreement" granted by an owner to a

government body permitting public access to the property, does not count against the $2,000 per year limitation. It is highly recommended that lake organizations consult with an attorney prior to engaging in recreational activities, so that the benefits of this statute can be clearly implemented. Earlier in this section, a lawsuit involving a diving accident at a lumberjack festival was discussed. That five years of litigation would have been eliminated if the property owner who donated his premises to the Chamber of Commerce had a "recreational agreement."

Diving Accidents

The Wisconsin Supreme Court has adopted a legal principle known as the "open and obvious danger rule." This rule was tested at various levels of the Wisconsin court system over the years and some inconsistencies had developed. The Wisconsin Supreme Court made a final decision which provides substantial protection to those owning or using lake property. While the full extent to which the courts will apply this rule and prohibit litigation is unknown, it is clear that diving accidents are the responsibility of the person doing the diving. Wisconsin has concluded that an adult who dives into water is encountering an open and obvious danger for which no one else can be blamed. In the past, municipalities, businesses and individuals had been sued on the theory that they should have posted signs warning about the shallow water or prohibiting diving. This is no longer required and lake organizations can feel much more comfortable in organizing water sport activities.

Liquor Liability

Liquor liability is often a concern for a lake organization. In 1985, the Wisconsin Legislature enacted Chapter 125 of the Wisconsin Statutes which states that a person is immune from liability for selling, dispensing or giving away alcoholic beverages to another person. The major exception to this immunity from civil liability is if the provider knew or should have known that the recipient of the alcohol was under the age of 21. In such a situation, if the alcohol provided to the underage person is a substantial factor in causing an injury to a third party, the person providing the alcohol will be responsible for the injuries.

It should be noted that there are statutory penalties for the improper serving of alcoholic beverages. For example, anyone who dispenses alcoholic beverages to an intoxicated person can be fined not less than $100 nor more than $500, or imprisoned for no more than 60 days, or both. Any adult who knowingly permits or fails to prevent the illegal consumption of alcoholic beverages by a person under 21 years of age, where the adult owns or controls the premises, is subject to a fine of up to $500 if the person has not committed a previous violation within the last 30 months. Also, anyone who violates any other provision for which penalty is not listed can be fined not more than $1,000, or imprisoned not more than 90 days, or both. **Essentially, Wisconsin protects a server of alcohol from liability for alcohol related injuries so long as the recipient of the alcohol is an adult.**

Independent Contractors

Lake organizations can substantially protect themselves when they hire an independent contractor to perform some function or project. Typically, a person or organization is not responsible for the actions of an independent contractor. However, if the lake organization retains too much control over the details of how the contractor is to perform the job, then this right to control the details of the operation can result in liability exposure. If the relationship between the lake organization and the contractor is similar to the typical relationship between an employer and an employee, the lake organization will be responsible for injuries caused by the contractor. On the other hand, if the contractor is hired to perform a specific function in return for compensation, the lake organization will not be responsible for how the contractor carries out its work.

When hiring contractors, language should be incorporated in the contract which gives the lake organization protection not only from litigating contractual disputes, but also from injuries caused by the contractor. The contract should include indemnity and hold harmless language which requires the contractor to defend and pay for any personal injury litigation, regardless of who the injured party sues. An even better way to obtain protection for the lake organization, is to require the contractor to have liability insurance and to name the lake organization as an "additional insured." Thus, the insurance carrier has a duty to defend and indemnify not only the contractor, but also the lake organization. In such a situation, any dispute as to responsibility between the lake organization and the contractor is of no concern, because the insurance carrier has to protect both. Also, the solvency of an insurer is rarely an issue, whereas contractors are often thinly financed and often judgment proof. **It is extremely important to get the actual certificate of insurance from the contractor before the work commences.** Many lawsuits are resulted where the contractor falsely promised to get the insurance, or said it existed when it did not.

When hiring an independent contractor, it is essential to verify the contractor's worker's compensation insurance. If the contractor does not have the insurance and cannot pay worker's compensation benefits to one of its injured employees, the lake organization which hired the contractor will be held responsible. **Be sure to obtain a certificate of insurance from the contractor showing that worker's compensation insurance exists; also, obtain the contractor's employer identification number** which is used on the contractor's tax reporting forms to the Internal Revenue Service.

When a lake organization enters into a contract, it is important that the people acting on behalf of the organization make it very clear that they are not acting individually, but rather on behalf of the organization. Individuals in Wisconsin have been successfully sued by contractors on the theory that the contractors thought they were dealing with a person as an individual, rather than dealing with the person as a representative of an organization. This kind of lawsuit arises where the organization cannot pay the charges and the contractor is looking for anyone it can find to pay its bill.

INSURANCE

While insurance is probably the best protection against litigation arising from personal injuries, it will provide no protection for contractual disputes. Insurance companies do not insure against liability for intentional acts. If a lake organization intentionally enters into a contract and a dispute arises over the terms of the contract, or over whether or not the contract was performed, insurance will not help. Insurance typically applies to acts that are "neither intended nor expected from the standpoint of the insured which result in bodily injury or property damage." This kind of coverage will protect against claims resulting from accidents.

While lake organizations can purchase insurance coverage for their protection, the individual members of the organization should look to their homeowner's and automobile insurance policies for personal protection. Volunteering your services to a lake organization typically will not affect coverage under a homeowner or automobile insurance policy. However, coverage can be excluded for an accident which results in a situation where the person is either an employer or an employee. Automobile policies typically exclude coverage when the vehicle is hired or rented to others for the charge. Essentially, homeowner's and person automobile insurers do not want to provide coverage for a person who is engaged in business pursuits. As long as there is no profit motive involved, an individual's homeowner's or automobile insurance policy can typically provide excellent protection when an individual is involved in the activities of a lake organization. There are many different kinds of insurance policies and many different insurers in the State of Wisconsin. It is important to read your insurance policy, and check with your insurance agent to determine the extent of coverage available when engaging in lake organization activities. Ideally, a letter from the agent explaining this coverage should be obtained.

A lake organization needs worker's compensation insurance coverage if it is subject to Wisconsin worker's compensation law. **Lake management districts must provide worker's compensation benefits, while non-profit corporations and voluntary associations have such responsibility if they have employees.** Lake organizations should seriously consider requiring any volunteer who uses a car or a boat to have automobile insurance or homeowner's insurance. Volunteers should check their policies to make sure that coverage exists when they are doing volunteer work.

SHOULD YOUR LAKE ORGANIZATION HAVE LIABILITY INSURANCE?

A lake organization, which is subject to the worker's compensation laws, is required by statute to purchase worker's compensation insurance from an insurer authorized to do business in the State of Wisconsin (Wis. Stat. Sec. 102.28(2); Wis. Stat. Sec. 102.04(1)(a) defines a lake management district as an employer; and Wis. Stat. Sec. 102.07(1)(a) defines the lake management district's elected officials as employees). No such insurance requirement exists for personal injuries caused to non-employees of the lake organization.

Whether or not to purchase comprehensive general liability insurance coverage is a question that needs to be answered by each lake organization, based upon its particular circumstances. Due to often limited budgets of lake organizations, and the relatively high cost of insurance, the premiums are often a significant portion of a lake organization's budget, the decision to buy it or go without, is often a difficult one. Voluntary lake organizations and non-profit corporations should look to their assets and consider whether protection of those assets is justifiable in view of the cost of the insurance. On the other hand, a lake management district, as a formal government body, is required to have any adverse judgment placed on the next tax roll. While that judgment is probably limited to a maximum of $50,000, a lot of political peace and security can be purchased through an insurance policy for a small fraction of the amount of exposure.

When considering the purchase of insurance, a lake organization should examine the kinds of activities in which it gets involved. While the extent of the lake organization's activities have a direct bearing on the number and kind of accidental injuries that could occur, it is often the cost of defending the litigation which is most significant. Even a frivolous lawsuit could result in the expenditure of several thousand dollars in attorney's fees. A significant portion of an insurance carrier's expenses are in defending the litigation, rather than in paying an adverse judgment or settlement. You should assume that if your organization gets sued, litigation costs could easily run $5,000 or more. The cost of defending litigation often runs several times that amount.

There is no clear-cut answer as to whether or not lake organizations should have liability insurance. One lake management district spends nearly 40 percent of its annual tax levy on insurance coverage, even though the district is involved in relatively harmless activities. The district doesn't want to go to the taxpayers to explain that the tax levy dramatically increased because of an uninsured personal injury in a frivolous lawsuit or a freak accident.

Officers of a lake organization should thoroughly discuss insurance issues with their members and an insurance agent before any decisions are made. Most members would be hard pressed to question a decision if an assessment for insurance premiums is made, or if later an uninsured lawsuit arises when they participated in the initial decisions making.

A fully informed lake organization, which has an opportunity to contribute their thoughts and discuss the issues is best positioned to make the wise decisions needed to guide their organization's legal and economic future.