VI. DIRECTORS AND OFFICERS COVERAGE

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USA VOLLEYBALL

DIRECTORS' & OFFICERS' LIABILITY INSURANCE PROGRAM

****Program premium, terms and conditions are subject to change after 11/1/2012.***

ESIX, in conjunction with the national office of USA Volleyball, has developed a special Not-For-Profit Directors and Officers Liability program for the Boards of Directors of the member clubs and Regional Volleyball Associations of USA Volleyball. For 2011, ESIX, our insurance broker, has negotiated a program that offers broad protection for this exposure at very competitive rates. We endorse and sponsor this program and have negotiated coverage that is customized for our local and regional organizations. An electronic platform has been created to make the application and payment process easy and quick.

Briefly, a $1,000,000 limit of protection may be purchased by each individual Club to protect all directors, officers, employees, and volunteers of that Club for **$575*** annually if that Club's gross receipts are under $1,000,000. An optional limit of $2,000,000 is available through this program for the annual premium of **$875*.** If the Club's annual gross receipts exceed $1,000,000, please print the offline application and fax it to ESIX at 678-324-3303 or email it to esix@esixglobal.com to be quoted individually. Both premiums assume no pending or prior loss activity and assume the club has less than 5 paid employees*.

All directors & officer liability program policies have a November 1st effective and expiration date. For any club enrolling mid-year, a pro-rata premium will be charged. There will be a minimum premium of $100.

We highly encourage each Club to purchase this insurance protection. You can do so by accessing the web site and following the link entitled, "Club Directors and Officers Coverage" or by visiting **http://www.fastcov.com/usavolleyball.** You will find extensive information regarding your personal risks; hypothetical claims scenarios, a coverage description, and other information regarding this important protection there as well.

We hope that the majority of USAV Regions and Clubs will participate this year. If you have not purchased this coverage in the past, you will be filling a major gap in your insurance program by purchasing this coverage.

Please feel free to call ESIX at **1-800-342-4371 or 678-324-3300** to discuss this information.

Understanding Directors and Officers Liability

The following information is offered to help understand the coverage. However, in order to fully understand the Association Liability Policy, the policy should be read and reviewed in detail. The precise coverage afforded is subject to the terms, conditions and policy as issued.

What is Association Liability Insurance?

Association Liability Insurance is a form of errors and omissions coverage for the managers of an organization's affairs and others who, while acting in their capacity as directors, officers, employees or volunteers of the organization, function in various roles to achieve the objectives of the organization.

It is similar in nature to policies maintained by or for the benefit of other professionals, such as lawyers, accountants, doctors, etc. Coverage is triggered by a claim made against a director, officer, employee or volunteer alleging that while he was acting in his capacity as such, he did or failed to do something (committed what the policy calls a Wrongful Act) for which he should be held personally accountable. Coverage also extends to the organization if named as a defendant in a lawsuit.

If I am sued, what financial protection do I have?

There are two methods by which the organization can provide financial protection to its directors, officers, employees, and volunteers: indemnification and insurance. Every state by statute permits nonprofit corporations to indemnify their directors and officers against loss incurred as a result of certain types of claims. However, such indemnification does not provide protection in all instances. Additionally, the organization may not have sufficient financial resources with which to pay the losses and defense expenses. This is why most nonprofit organizations purchase Association Liability insurance.

Why do claims arise?

The law provides that under given circumstances, directors, officers, employees and/or volunteers can be held personally accountable for their actions. These individuals can be held accountable for failing to act in accordance with the high standard of conduct commensurate with the duties owed to their constituents.

Additional information can be found under:

- **Hypothetical Claims Scenarios** (http://www.fastcov.com/usavolleyball/hypothetical_scenarios.asp)

Who brings these suits?

Potential claimants include:

- Employees - allegations may include wrongful termination, discrimination, or sexual harassment
- Volunteers - allegations may include failure to supervise others activities which resulted in harm to the volunteer
- Members (players) and/or their parents - allegations may include failure to properly supervise, discrimination, denial of credentialing, sexual harassment, or any other dispute in which the member (player) believes caused harm to him or her
- Competing clubs - allegations may include libel and slander or unfair trade practices
- Organization - allegations may include breach of your duty of care

- Outsiders - outside third parties who transact business or otherwise deal with the organization may assert a claim against a director and/or officer if such outsider has been personally and directly harmed by the wrongdoing

Who is covered?

Past, present, and future directors, officers, employees and volunteers are covered for the reasonable costs of defending themselves against claims alleging a wrongful act, as well as the personal liabilities that they incur for their acts. Additionally, the organization is covered to the degree that it can or may be permitted to indemnify its directors, officers, employees and volunteers and for its direct obligations.

What is covered?

Association Liability insurance protection revolves around the term "wrongful act," which basically means any actual or alleged act, error, omission, misstatement, misleading statement, neglect or breach of duty while acting in your capacity as a director, officer, employee or volunteer and on behalf of your organization.

What is not covered?

The policy contains relatively few exclusions which are briefly described as follows:

- An adjudication of gaining illegal personal profit or advantage
- An adjudication of a criminal, fraudulent or dishonest act
- **For bodily injury or property damage**
- Alleging or arising from responsibilities and obligations imposed by the Employee Retirement Income Securities Act of 1974 (ERISA), the Fair Labor Standards Act (Except the Equal Pay Act), the National Labor Relations Act, and other similar federal, state or local statutory law
- Alleging or arising from obligations pursuant to any workers' compensation, disability benefits, unemployment compensation, unemployment insurance, retirement benefits, social security benefits or similar law
- Arising from pollution or contamination
- Brought by one Insured against another Insured, except for derivative claims or employment practices claims
- Insured under a policy previously in force
- Alleging or arising from professional services performed for others
- Arising from pending or prior litigation (as of the date of the first policy purchased)
- Alleging or arising from an express or implied contract, except for employment practices claims
- Arising out of circumstances which at the inception date of the policy any director, officer, employee or volunteer should have recognized as having the potential for claim

This list is not exhaustive but does contain many of the exclusions relied upon by the insurer to circumscribe the coverage. It is important to review the actual policy for specific language and terms.

How much protection is being offered?

The policy limits of liability are $1 million and are available to respond for defense expenses and expenses of a claim and amounts paid to respond for the liability (damages, judgments and settlements). The $1 million limit is per individual policy. This limit is not "shared" among individual policies. Defense fees and expenses are payable **outside the limits of liability**. The limits of liability are provided on an annual aggregate basis for all claims against all directors, officers, employees, volunteers and the organization.

What is the deductible ("retention") amount?

If protected individuals are held personally liable and no indemnification is available from the organization, the individuals have no deductible or retention amount that they are responsible for under a covered claim. However, if the organization is held

liability or if it is able to indemnify the individuals named in a suit, the retention amount is $1,000.

What does "Claims Made" policy mean?

Association Liability insurance is offered on a "claims made" basis, which means that claims must be made and reported during the policy period. Individuals should be certain that adequate reporting mechanisms and oversight responsibilities exist for this purpose.

Myths Regarding Personal Liability

The following information is offered to help understand exposure related to the Association Liability coverage. It should be noted that the precise coverage afforded is subject to the terms, conditions and policy as issued.

Myth

We don't need to purchase insurance to protect our personal assets.

Reality

These are the facts:

- Nonprofit organizations are not immune from costly litigation.
- Nonprofit organizations are being sued more often and from more sources, despite laws in most states that limit the liability of nonprofit directors and officers.
- Employment related suits for such things as harassment and wrongful termination are at an all-time high, especially since enactment of the Civil Rights Act of 1991 and the Americans with Disabilities Act of 1992.
- Directors and officers are subject to the duties of diligence, obedience, and loyalty and can be sued for negligence in the performance of those duties.
- A claim could threaten the personal assets of directors, officers, and trustees.
- The financial burden of defending a suite against directors, officers, employees or volunteers can drain a nonprofit organization's badly needed resources.
- Non profit organizations are often seen as "deep pockets" despite low asset levels.

Myth

I can't be held personally liable for my actions associated with this organization.

Reality

Since 1985, a number of states have enacted statutes which purport to eliminate or limit certain types of nonprofit directors and officers liability exposure. These statutes vary greatly and require close examination to determine their true benefit. None of the statutes create absolute immunity for the directors and officers. For example, none of the states impact any liability based upon a federal statute or rule. Many of the statutes expressly do not apply to a breach of the duty of loyalty, which is perhaps the most frequently asserted claim against nonprofit directors and officers. Even if a liability limitation applies, the directors and officers may still be subjected to defending the claim and funding the costs associated with that defense.

Myth

No one will sue me. I am a volunteer for a nonprofit organization. Even if a lawsuit were to arise, it will be against the Organization, not me.

Reality

History proves that directors, officers, employees and volunteers of nonprofit

organizations are individually sued across the country. Suits alleging discrimination, wrongful termination, harassment, or false accreditation are not uncommon.

Myth
We purchase General Liability Insurance which protects me for any personal liability if I am individually sued.

Reality
General Liability Insurance can protect the assets of your organization when it is sued for doing (or not doing) something that results in bodily injury or property damage. This type of insurance does not provide protection for lawsuits brought against the directors, officers, employees or volunteers or the organization directly for failure to properly perform your duties as such.

Myth
My personal homeowners' insurance policy will provide protection for me if I am personally sued.

Reality
Although a personal homeowner's insurance policy can provide protection for lawsuits brought against you, most specifically exclude coverage for activities relating to your voluntary service or serving on the board of an organization. This exclusion would apply to any act or omission, regardless of its nature or circumstance, involving a service or duty rendered, promised, owed or implied to be provided because of the nature of the organization.

Myth
Our organization and its directors, officers, employees and volunteers are already protected under our national associations' liability program.

Reality
Although some national associations purchase an Association Liability Insurance Policy, it does not always extend protection to regions, local associations, or member clubs.

Myth
My organization will pay for any lawsuits brought against the directors, officers, employees, and volunteers personally, or against the organization itself. It will indemnify (cover) me if I am personally sued.

Reality

Every state by statute permits nonprofit corporations to indemnify their directors and officers against loss incurred as a result of certain types of claims. However, such indemnification does not provide protection in all instances. For example, indemnification may not be available to the director and officer for the following reasons:

1. The organization may become insolvent or may not have sufficient resources to pay the losses and expenses incurred by the directors and officers.
2. Either the applicable law or the corporation's internal indemnification provisions may be modified to limit or prohibit the expected indemnification.
3. The composition or attitude of the organization's board of directors may change so that the board is no longer sympathetic to the prior officer or director and thus does not make the necessary determinations to authorize the indemnification.
4. As a matter of policy, the organization may deem inappropriate to use contributed funds for such indemnification.
5. Because of public policy considerations and statutory limitations, some claims may be insurable but not indemnifiable.

Association Liability insurance (Directors & Officers Liability insurance) can help provide protection to the directors, officers, employees, and volunteers for all of these non-indemnifiable exposures and thus can offer a more comprehensive financial protection program for these individuals.

Myth

This type of insurance is too expensive, complicated and cumbersome to purchase.

Reality

Purchasing Association Liability insurance to protect directors, officers, employees, volunteers and the Organization itself couldn't be easier or less expensive. By simply completing a short electronic application for coverage and processing payment terms, your Organization can purchase protection for its directors, officers, employees, volunteers and the Organization itself if named in a suit. If your total gross annual receipts are less than $1,000,000, the total annual premium for a $1,000,000 limit of liability (which is shared by all covered parties) is only $625. This amount provides protection for all directors, officers, employees, volunteers, and the Organization.

Hypothetical Claim Examples

The following information is offered to illustrate possible allegations which could be made against a non-profit sports club. In order to fully understand the Association Liability Policy, the policy should be read and reviewed in detail. The precise coverage afforded is subject to the terms, conditions and policy as issued.

Employment Claims

Hypothetical: Employee/volunteer is terminated and files suit alleging wrongful discharge or discrimination based upon the sex, race or age of the employee/volunteer.

Hypothetical: Allegations are made that the club's Board refuses to appoint a minority as a director thereby causing damage to the person.

Hypothetical: Volunteer coach files suit alleging the directors and officers wrongfully denied his request to volunteer based on rumors that he had previously been convicted of child molestation charges, which were false.

Third Party Discrimination Claims

Hypothetical: Member (player) files suit alleging discrimination after being suspended from a game shortly after the directors learn of his involvement in an armed robbery. Hypothetical: Member (player) files suit alleging age discrimination alleging a volunteer/employee wrongfully denied a younger members' request to participate in an older member age group.

Sexual Harassment Claims

Hypothetical: Member (player), employee, or volunteer files suit alleging the coach sexually imposed upon her and that the board members were negligent in the selection of the coach and in failing to supervise his activities.

Credentialing Claims

Hypothetical: Members (players) file suit alleging the Board wrongfully denied the requested credentialing unfairly and improperly.

Defamation Claims

Hypothetical: A competing club files suit alleging the Board allowed materials to be distributed that libeled or slandered the club as a result of the communications by the organization and its directors and officers.

Breach of Duty of Loyalty Claims

Hypothetical: Director, officer, employee or volunteer is sued for allegedly using the organization as a business conduit to benefit himself.

Breach of Duty of Care Claims

Hypothetical: Directors are sued for furnishing goods, services and facilities to a person disqualified under applicable law or bylaws from receiving those goods, services and facilities.

Failure to Supervise Claims

Hypothetical: Directors are sued for failing to conduct routine audits and failing to supervise the Treasurer once it discovers a dramatic shortfall in its bank account.

WHO IS ESIX?

Entertainment and Sports Insurance Experts (ESIX) is a fully integrated risk management and insurance brokerage firm dedicated exclusively to clients in the sports and entertainment industries. ESIX was established in 1994 to serve the risk management and insurance needs of amateur and professional sports organizations, entertainers, athletes, teams, venues and associations.

Today, ESIX operates out of offices in Atlanta, Colorado Springs, and London. Built on a reputation of integrity, innovation and service, ESIX continues to develop comprehensive and cost effective risk management and insurance solutions for our valued clients. Whether you are in need of an insurance product or risk management expertise, ESIX will deliver.

ESIX serves some of the nation's most prestigious **professional and amateur sports organizations, foundations, national governing bodies, associations**, **teams and venues**. By outsourcing the majority of their risk management and insurance functions to ESIX, these organizations are able to access valuable risk management and insurance expertise at a significantly lower overall cost. ***Over 200 sports organizations look to ESIX for their risk management and insurance needs each year.***

ESIX applies its risk management and insurance expertise to **events**, ranging from world-class sporting events to concerts and local events. ***Working with event organizers, sponsors and promoters, ESIX provides risk management and insurance support to over 100,000 events per year.***

ESIX works with **individual athletes and entertainers** to provide insurance products designed to protect their financial future (and that of their family) in the event of death, disability, sickness or other exigencies associated with their skill. Top money winners on the ATP and PGA tours, auto racing champions, elite players in the NBA, NHL, NFL and MLB, and high profile collegiate, individual sport and entertainment performers are among our clientele. ***In total, over 1,100 athletes and entertainers are insured through ESIX each year.***

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