

yourmembership[®]
.com

INDUSTRY TRENDS
EVERYONE'S A RISK MANAGER

Everyone's a Risk Manager

Written by Leslie White, CPCU, CIC, ARM, CRM

As a risk management consultant, I should be happy everyone thinks they are a risk manager. But often the person's sense of risk and liability is more of a weapon than a tool. She convinces others that a course of action is too risky due to liability. The activity may be risky but that shouldn't be the only reason not to pursue the idea. Liability is just one exposure to consider when assessing risk.

While it is true in the United States anyone can sue anybody for any reason whether or not the case has merit but you should not fear every liability exposure. Filing a claim or lawsuit is not the same as winning although insurance companies spend a lot of money defending you for such claims which is why you buy insurance. But having insurance does not negate your need to assess and manage your risks.

Understanding liability and negligence will help with your risk assessment efforts. I am not an attorney so I view liability from an insurance and risk management perspective. Consult with your legal counsel on the law but remember an attorney's opinion is just one factor to consider in your analysis. You can manage most liability risks if you're willing to expend the time and resources to do so.

Liability

Society considers a person or organization liable when an individual is legally responsible for damages (financial consequences) due to negligence. Not all types of liability (such as criminal, statutory or strict) require the presence of negligence but that is what worries association executives the most.

Negligence

You are deemed negligent when you fail to perform the standard of care that society expects of a reasonable person under similar circumstances. "Negligence is an unintentional of a legal duty causing damage reasonably foreseeable without which breach the damage would not have occurred" (van der Smissen, Betty, Legal Liability and Risk Management for Public and Private Entities, (Anderson Publishing Company, Cincinnati, 1990, p. 65).

Standard of Care

Negligence is tricky because your actions are judged by the "standard of care" a reasonable person would exercise. There is no Standard of Care Manual detailing society's expectations for your behavior a judge or jury decides if you are negligent by what they think you should have done. Many attorneys argue against associations setting standards or best practices since the association is possibly creating the standard of care required of your industry or profession.

Reasonable Person

The "reasonable person" is another ambiguous term defined by the judge or jury. The standard is based upon what someone with the same level of training and experience would do under similar circumstances. Your actions are judged by what another person with similar training and experience would have done in that situation. A doctor is held to a higher standard than someone with basic first aid training.

Elements of Negligence

A negligent act has to meet four elements for the claimant to be successful. If any one of these elements is missing you aren't negligent.

- **Existence of a duty** – You must have a duty of care to the person injured. If you have no duty, you can't be negligent. Entire books have been written and endless court cases cited to define the legal tenets of duty of care. In most cases an association will have some type of duty to its employees and members.
- **Breach of duty** – You have to breach or violate your duty of care to another person. You can do something wrong, do nothing, or you do the right thing incorrectly. Negligence involves sins of both of omission and commission.
- **Actual harm or damage** – The other person has to suffer some type of injury or harm. As the saying goes "No harm, no foul."
- **Reasonably close relationship between the breach and harm** – The breach of duty has to be the proximate cause of the harm. There needs to be a direct causal relationship between the breach and harm.

Everyone's a Risk Manager

Written by Leslie White, CPCU, CIC, ARM, CRM

There needs to be a direct causal relationship between the breach and harm. Your failure to check the driving record of someone driving on your behalf may be the proximate cause of an auto accident when the driver has an unsatisfactory driving record.

Your defense attorney will contend the claimant has not met these four elements of negligence while the plaintiff attorney will dispute those arguments.

Now What?

Now you have a rudimentary knowledge of negligence to use when assessing risks. Before you dismiss or go blindly into a new idea, program, and product or service consider the nature and potential consequences of the exposure. Liability is a major concern for associations. The key is to decide the desired level of risk and whether you can mitigate the risk, modify the activity, to make it acceptable in an effective and cost-effective way. Too many good ideas can be lost because no one took the time to evaluate and manage the risks.

About the Author

Leslie White, CPCU, CIC, ARM, CRM consults to associations and nonprofits about risk management and risk and social media.. Follow her on Twitter [@ltwhite](#). Her web page is [Risky Chronicles](#).

INDUSTRY
TRENDS