



Protect America's Climbing

Landowner Support and Risk Management **General Liability Insurance Frequently Asked Questions**

Compiled by Doug Colwell & Joe Sambataro

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None of this information should be considered legal advice. The following information was not drafted by an attorney. This information is, in our experience, a set of best practices. However, it is not a substitute for qualified legal counsel. It is always advisable to consult a licensed attorney when selecting insurance to guard against liability.

Insurance is one of many risk management tools used to address the potential liability of permitting public access and recreation. A general liability insurance policy is highly recommended for any local climbing organization (LCO) that owns or holds a permanent easement on a climbing area, or secures short-term access through a management agreement, lease, or license. For agreements with private landowners, offering additional insured status provides the landowner another level of liability protection. Public land agencies may often require additional insured status for stewardship projects, events, or similar agreements.

The following summary and frequently asked questions are a guide to help determine the options available for the LCO working in partnership with a landowner and the Access Fund. It also addresses the limitations of insurance. While insurance is a recommended risk management tool; it is never a guarantee for the LCO or landowner. It does not prevent a lawsuit nor does it guarantee coverage for an incident. It is encouraged to couple liability insurance with other tools such as qualification under the state recreational use statute, appropriate signage, limitations on commercial use, and possible indemnification in agreements. For general information on risk management, view www.accessfund.org/landownersupport, review your state recreational use statute at nationalaglawcenter.org/assets/recreationaluse/index.html (2007) and discuss other tools with Access Fund staff. Most importantly, neither this document nor Access Fund is a supplement to qualified legal counsel, which should be consulted separately by the LCO or landowner.

LCO General Liability (GL) Insurance Options – Access Fund (AF) has explored numerous options to consider for securing general liability insurance. To summarize these options:

1. An LCO with 501c3 status can join the Land Trust Alliance (LTA) and receive that discounted rate through the Chubb Alliant Conserve A Nation program, the same as AF.
2. AF explored creating an umbrella group similar to the LTA for affiliate LCOs. 10-20 affiliate organizations noted they may consider it in a poll, but the discount would likely not amount to the same as the LTA Conserve a Nation program (which has thousands of member organizations enrolled).
3. Purchasing a policy from a local agent/broker is another option. Without several LCOs as clients, most agents will have to access the excess and surplus lines market to obtain a proposal. Make

sure to review the terms and conditions of the proposal very closely, ask for copies of all forms and endorsements. Many policies have limitations or fairly broad exclusions.

4. Under certain circumstances, an LCO without 501c3 status could be added to AF's policy as a named insured. The LCO would be required to go through an underwriting process and, if approved by the insurance company, there would be an additional cost associated.

Reasons that a LCO should have its own coverage, independent of the AF's insurance policy.

- The Access Fund's insurance policy does not provide coverage to LCOs unless AF has applied for and explicitly been granted Additional Insured status for a particular LCO (See additional insured comments below.)
- An LCO often has a variety of exposures to loss arising from its existence, premises, activities and operations, all of which are independent of the AF.
- The Access Fund's insurance policy will not provide coverage to meet the insurance requirements of an LCO entering into a contract or lease with a third party.
- Exposes AF limits to a LCO's project over which they have no control
- Multiple named insureds on master policy dilutes AF limits in event of a claim
- Liquor Liability may be needed if a LCO plans events where they hold the liquor permit or are directly involved in sale and distribution of alcoholic beverages. Often, it's best to ask another entity with a liquor license/catering permit and share in proceeds than to take on the exposure.
- Use of non-owned autos – All Board members and volunteers may use their auto in the course of the LCO's operations. Hired and non-owned auto liability insurance coverage provides a defense for the named insured and excess coverage for the individual auto owner in the event of an accident for which the named insured is liable.

How much does a LTA policy cost a LCO?

A Chubb Alliant Conserve A Nation insurance policy through the LTA provides a package of coverage with a minimum premium usually ranging between \$500-\$1000 per year plus LTA annual membership starting at \$250: <http://www.landtrustalliance.org/join/liability-insurance>

What does the LTA general liability (GL) policy provide a LCO?

\$1 million per occurrence/\$2 million annual aggregate general liability coverage and \$1 million per occurrence hired and non-owned auto for each named insured. By joining the LTA and paying premium a LCO, would have limits of liability specific to their LCO.

How does the LTA GL policy address special events?

The LTA GL policy has a specific wording extending coverage to certain events less than 500 people. It's a good business practice to clarify which events are covered during the planning stage.

Does the LTA GL policy extend to the use of hired or non-owned autos?

Yes, liability only.

Does the LTA GL policy cover commercial use such as guiding, formal instruction, or climbing competitions?

No. Use by the general public to climb, hike, rappel and conduct other recreational activities is covered by the LTA GL policy, but commercial use is not. This includes any company, outfit, or organization performing formal instruction of students or guiding clients. These operations must provide evidence of their own GL policy and list the LCO/landowner as an additional insured. For example, AF requires a certificate of insurance listing AF as an Additional Insured as well as a commercial use agreement/release for commercial use of any of its land holdings. In addition, the LCO can conduct fundraising activities and stewardship projects (such as trail work, clean-ups, improvement construction) under the LTA GL policy, but it cannot conduct formal climbing activities (such as a comp or formal climbing event) on its land or another property per an agreement. Instead, the LCO must secure special event insurance for the specific date(s) of the formal activity or have these activities organized/led by a third party with GI insurance as described above.

Can the AF's master policy be extended to a LCO?

The AF's policy is not intended to indemnify against the actions/omissions of a LCO or the LCO's "lessee affiliates". Nor is AF's policy a vehicle of providing proof of coverage for a LCO's land transaction. In certain cases, AF may request that an LCO be added to their policy as an "Additional Insured". This is requested on a case by case basis, and it is at the discretion of the insurance company to determine whether or not there is insurable interest. In the case that Additional Insured status is granted, AF's policy will only respond to defend a LCO as an additional insured in the case that sole or shared alleged negligence and legal liability in the loss belongs to AF. In the case that the LCO is solely negligent, there's no coverage for the LCO. Consider the following:

- Under the Access Fund's general liability policy, the Access Fund has coverage that will respond to and defend claims of bodily injury or property damage arising from the Access Fund's alleged negligence and subsequent legal liability.
- As an Additional Insured under the Access Fund's general liability policy, an LCO has coverage that will respond to and defend in the unfortunate case that the LCO is pulled into a claim of bodily injury or property damage arising from the Access Fund's alleged negligence and subsequent legal liability.
- As an Additional Insured under the Access Fund's general liability policy, an LCO does not have coverage that will respond to and defend claims of bodily injury or property damage arising from the LCO's sole alleged negligence and subsequent legal liability.

What are some of the typical exposures to loss faced by a LCO?

Many have liability arising from short & long term leased/licensed premises, owned premises or premises of others. Operations such as climbing, conservation efforts, trail building or fundraisers are normal activities for a LCO. At a fundraiser, any food and swag, creates products liability exposure, albeit small. Trail building, parking lot and bathroom construction are examples of completed operations exposures.

A Commercial General Liability policy provides premises, operations, products and completed operations coverage for the named insured (LCO).

Coverage is provided for those sums for which the named insured is legally liable, caused by bodily injury or property damage, during the coverage period, within the coverage territory, which are not

otherwise excluded by the policy. Most often, legal defense costs are outside the limit of liability, paid in addition to any compensatory damages, and the insurance company selects counsel. \$1 million per occurrence/\$2 million annual aggregate limits are standard limits on commercial lines policy.

What is Additional Insured status?

An additional insured is where two arms-length parties (such as a lessor & lessee) have agreed contractually that one party is to be added to the other's insurance for a specific purpose on a limited basis. For example, the lessor can be added as an additional insured extending coverage for liability created by lessee. The lessee's policy then provides a defense to the additional insured for covered claims arising from the lessee's actions or inactions resulting in their legal liability. All policies have exclusions and not all claims are covered.

Organizations often misunderstand the nature of being granted Additional Insured status, and incorrectly assume they have secured equal insurance protection under the policy of another organization with whom they partner. Further, these organizations often hold the mistaken belief that being granted Additional Insured status effectively releases them from the responsibility of securing their own coverage, a mistake that could become costly in the event of a loss.

Instead, Additional Insured status is simply intended as a mean of backing up indemnification language in a contract. It is primarily intended to offer protection to a third party that you contract with, should that party find themselves pulled into a claim stemming from your negligent actions. Access Fund can add LCOs as Additional Insureds in cases where the LCO is partnering on a project or event. We just want to make absolutely sure that the LCOs are not under the false impression that this is the equivalent of purchasing their own coverage, even on a per-project basis.

Each loss event is unique, and determination of fault and interpretation of contracts can be at the discretion of the courts and/or arbitrators. While it is not possible to predict the outcome of every hypothetical situation, organizations should be aware that it is possible that Additional Insured status will not fully cover the expenses (defense costs and/or judgment against) of the LCO if the LCO is, in fact, found to be partially or fully negligent and legally liable.

What is the difference between Additional Insured and Additional Named Insured?

An additional named insured is essentially the same as the policyholder. Think of an additional named insured as a subsidiary or similar firm. There is much more than a contractual relationship (excepting some management contracts). Unless there is common majority ownership/management, most insurance carriers will not name another as an additional named insured on a policy. Additional Insured status is not the same; it's an extension of coverage intended to defend the Additional Insured from claims arising from the first named insured's actions for which the Additional Insured is also named.

What does a Certificate of Insurance provide?

A Certificate of Insurance provides evidence of coverage only and does not confer any rights to the certificate holder. It is used to show proof of status as an additional insured from one party (grantee/lessee) to another (grantor/lessor).

If a LCO was found negligent within the context of the recreational agreement/lease allowing climbing, would this be covered under a premises liability policy or Director & Officers (D&O) policy?

A loss occurring on leased/licensed land is most likely going to be reported/filed as a general liability suit or claim. Directors and Officers liability policies often have exclusions related to bodily injury or property damage. Most D&O claims involve allegations of a breach of duty by a member or members of the board vs. a contractual liability.