

Chapter Executive Idea Swap Summary May 13, 2020

From NAIOP CEO Tom BISACQUINO:

- He and Chairman Larry Lance continue to virtually meet with local chapter boards.
- Chapter executives are encouraged to schedule a meeting with their chapter boards. Contact [Kelly Lempel](#) or [Beth Gulding](#) if you are interested.

From NAIOP Chairman Larry LANCE:

- He encourages everybody to be courageously vulnerable; deal with what happens; manage it in such a way that you're professional and ethical; hold your heads high and we'll manage through this.
- Thanks for all your efforts.

Julia VAN DE WILLE, CCIC, Area Director, Nonprofit Practice, of NAIOP's insurance carrier, Gallagher, on Liability in COVID-19 Era.

- The *Gallagher Report: Responding to the Coronavirus* was distributed under separate cover and available on [COVID-19 Chapter Resources](#).
- Liability is a changeable and developing issue within the insurance industry which will continue to be greatly affected by the pandemic. Most cases will be litigated, therefore the industry will not know for quite some time how many of the issues will be resolved and in whose favor.
- There are **three areas of potential liability most applicable to chapter & volunteer organizations**.
 1. A typical business owner's policy or package policy covers bodily harm and/or property damage. A claim may include failure to prevent exposure to infections, failure to exercise appropriate degree of care, failure to remove infected individuals, or failure to follow civil authority instructions. To diminish liability, know the restrictions and guidelines concerning opening and holding events. This includes state and local guidelines.
 2. Another avenue to claim damages is under the chapter's management liability insurance coverage which covers harm to chapter finances. This includes negligence in lack of duty of care, lack of preparedness, and/or lack of response which resulted in infection. Most management policies do not currently have a virus exclusion. This will change during the policies' renewals.

3. The third avenue for liability is cybercrime. Most employees are working from home which opens up the organization to ransomware attempts. To diminish liability, caution is mandatory in communicating remotely. Don't publish personal information, either employee or member, over electronic means whenever possible.
- There are a few **things that can be done to mitigate exposure when things "open up"**:
 1. Know and follow local, state and federal guidelines regarding safety protocols. It will be difficult for a claim to go far if the chapter can prove they have followed all procedures but there is a high defense cost in litigation. Chapters should take every precaution to protect members and therefore the organization.
 2. Chapters should prepare.
 - a. Think through the responses to all scenarios. How will the chapter communicate expectations? How will the chapter enforce the expectations? Remember discrimination/ADA/HIPPA laws are still in effect when planning the chapter's response.
 - b. Know the environment being used for the event. What are the venue's protocols? Ask about venue policies, cleaning procedures, social distancing, employee/public interaction, etc.
 - Gallagher is always updating [coronavirus resources](#) on their [website](#). If you've got specific questions related to insurance especially as you start bringing back events, please feel free to contact Julia at julia_vandewille@ajg.com.

Q: Is Gallagher following Congressional debate and negotiations on liability protections?

A: Yes Gallagher is following both state and federal efforts to enforce business interruption insurance coverage where there have already been losses. There's also efforts to protect organizations from liability. The industry is not sure exactly what form that's going to take. There are many organizations concerned about reopening and bringing people together and their exposure surrounding both. At the state level there's a number of bills being introduced regarding worker's compensation claims.

- NAIOP Senior Director for State and Local Affairs Toby BURKE: Utah passed a law last week that business owners are immune from civil liability for damages or injury due to an exposure of an individual to Covid-19. Businesses acting with willful misconduct, with reckless infliction of harm, or intentional infliction of harm will be held liable.

- VAN DE WILLE: That is what a plaintiff would try to prove – that there was gross negligence. Even though you've got some state protection from liability it's important to be able to demonstrate and document that the chapter is following local and state safety protocols.

Q: How much government regulation documentation do you recommend? For example if the chapter holds a meeting is it necessary to save a copy of the guidelines in place at that moment in time?

A: That's a great idea. You can't have too much documentation and you'd be happy that you went to that trouble, should you, in the unlikely event, face a lawsuit.

Q: What about waivers from participants who sign something that they are well?

A: It's more of a legal question than an insurance question. Our position is that a waiver is probably not a bad idea in most cases. However, there is a variability in enforcing waivers by state and locality. They really need to be tailored to the jurisdiction with attorney input to be legally enforced. They certainly can be effective as a defense in a liability claim but the legal enforceability will depend on where the lawsuit is filed.

Q: If we do put waivers in and we have language drawn up that lawyers approve, the ability to get everyone to agree to them would be a challenge. We could make it a part of the registration process but then how do we handle the walk-ins? Does that essentially negate the entire value of the process?

A: Not necessarily. If the one attendee who did sign a waiver was the one who brought the lawsuit, then you'd probably be in a better position. That's just something you'd have to decide. It's a business decision - are you going to require a waiver or they can't get in the door?

Q: Do chapters generally carry general a liability policy or get special event policies?

A: It's probably worth checking with your insurance agent to see if there are any exclusions related to transmission of a virus or communicable disease in all current policies.

- NAIOP Wisconsin has an umbrella policy and do not get it for specific events usually.

Q: Are we responsible for taking temperatures or do we hire someone?

A: If you can, hire someone - any way you can push the risk onto someone else. In this case, you'd be hiring a nurse or nurse practitioner, or similar. They have medical expertise and can assess - do they present with other symptoms? For an example, an elderly person might have a lower temperature, but have other symptoms. If you can have that judgement made by a professional, absolutely that's protection for you.

Q: Is there liability if we give out promotional masks?

A: It's hard to see a claim coming against you if a mask was inadequate. Clearly the masks are not designed to protect everyone from inhaling coronavirus. It's more protecting others. If there's a disclaimer related to the mask, you may want to add that onto the waiver. If you are using somebody else's mask, it's hard to see an exposure there. Any mask is better than no mask. And if you're going to require a mask, then you're going to have to have some on hand.

Who is considering adding an attendee waiver to their events? Has anyone been thinking about it and started talking to their legal counsel?

- NAIOP Wisconsin will have a happy hour in June and a waiver was one of the accommodations. Every law firm in town is a member and all of them were asked to work on putting together language for registration. Onsite will have paper copies available at the actual event for someone who just shows up.
- NAIOP Central Ohio will meet with the golf course on Friday to talk about their June 18th golf outing. They are taking some precautions and it falls within the realm of the Governor's orders. Even if waivers don't hold up, having them lets people know that we expect them to be responsible. At the course, they take temperatures of anyone going into the clubhouse, so they will probably do something like that the day of. Golf carts will have Plexiglas between seats so that two people can be in one cart. They will go through all of the rules that are in place as of this date and modify as they get closer, put a disclaimer in the registration form "This is what it is today. If we have to have other precautions or something changes we will let you know." Be forward thinking and doing it all ahead so that you're covering yourself later.
 - *Q: Is the club requiring masks?*
A: Yes. If you go into the clubhouse you are required to have a mask. If you're outside, I don't think masks are necessary. All the employees will wear masks and gloves inside the clubhouse.
 - *Q: Who's providing the masks?*
A: You can have your own and if you don't have one, they will give you one. They have some with their logo on them. I'm considering purchasing NAIOP masks, hand sanitizers and wipes as giveaways.
 - *Q: Do you have manned hole sponsors planned? Any guidelines for them?*
 - A: That is also on my list of questions for the golf course. I hope we can have one sponsor per hole, if they wish to be out there. Many sponsors chose not to sit at the hole in past years.

For chapters looking at hosting events in the next few months. Are there limits and executive orders on the number of people that you can have convened?

- NAIOP Wisconsin: After May 26, due to an expected order from our supreme court, Wisconsin stay-at-home orders go away. They are talking about 25% occupancy for restaurants etc. For our planned happy hour, one of our members has a vacancy in a coffee shop which has a great patio. We are going to set up a bar outside. There will be indoor/outdoor space, but we haven't heard if there will be any additional restrictions. For us, it's more about coming up with what we think is reasonable.
- NAIOP Alabama: Alabama lifted the ten person limit on Monday and now there are no maximum restrictions. Birmingham will host a 1,200 person graduation ceremony in the football stadium next week. Everyone is still asked to keep their social distance and wear a mask if possible.
- Toby BURKE: Each state has developed its own economic restart in phases. The size of events, location, etc. depend on the spread of the pandemic within each state. If infections spike upwards, governors may re-impose tighter business and event restrictions.
- NAIOP Central Ohio: In the golf course indoor dining area, they can accommodate up to 70 people per what the governor has allowed as of today. Additional people can be accommodated outside on the patio. We usually have about 144 golfers. If we start earlier in the day, how spread out the golfers have to be? We have always done a shotgun start, but now the groups must go out at a specific time apart.

Has anyone tried networking events on virtual platforms? Did you have a program or questions planned out or is it free-for-all?

- NAIOP Maryland: We are looking at [Remo](#) for the networking aspects. It looks really interesting. Unlike Zoom it looks very focused and purposed, so it would only be to replace a networking event where you could clearly walk from room to room. It wouldn't be something that Zoom, Teams, or WebEx could provide. We haven't used it yet.
- NAIOP Central Ohio: With another group, we did happy hour networking on Zoom with some polls thrown in and idea sharing. We had a theme, set your background to a vacation, somewhere you'd like to be if you could be somewhere else. Then we did some polling – questions to get the pulse of the people if they are getting enough communication. We kept it light. Threw in the poll questions and then we'd talk about them. It was a small enough group that I think it was productive without seeming too canned. It allowed people to talk about silly things too and to take the conversation wherever it went.

- NAIOP Chicago: We have held Zoom breakouts.
- NAIOP Central Florida: We use Zoom breakout rooms as well. We created four conversation topics and manually controlled which attendees were in each room in order to make sure we had a “host” in each room.
- NAIOP Northeast Florida: The first one had preset questions with a leader in each room, so that someone was in there to carry the conversation. For the most part, everyone knew someone. The second one we had was smaller and actually was more fun. We weren’t talking much work at all. We were talking about fun things, people were drinking, and people were walking around their house showing us stuff.

NAIOP Minnesota/Stephanie WOLF on applying and getting approval for continuing education for virtual programs:

- The Department of Commerce here waived the 30 day application requirement, so the chapter applied at the last minute. Our first one is actually next week.
- The state hasn’t changed any of the other multiple requirements. We have to ask poll questions during the webinar which must be answered. Everyone’s sign in attendance must be logged including sign out times.
- It seems like all the requirements can be met through Zoom.

MARKET UPDATES:

NAIOP Wisconsin/Jim Villa:

- Conducted two polls about three weeks apart to get a sense of the membership’s thinking and needs. Used that data along with the NAIOP Corporate poll to determine programming ideas.
- I will meet virtually tomorrow for the first time with the key Principal members. Will then hold a Principals-only webinar to get a little better handle on where everybody is in their thinking and so they can hear each other.
- From a chapter standpoint, this week the topic is all about reopening and cleaning. All environmental/ engineering companies want to hold a webinar with us now.
- Our webinar attendance started to drop off and we are moving to panel discussions. Three founding members of the chapter, all past presidents, agreed to hold one in a couple of weeks. Four key local economic development leaders in this region of the state will hold a panel discussion today.
- Interest has grown in holding in-person events and some, including some of the leadership, firmly believe that NAIOP needs to be out front when the governor allows business to open so we’ll do something in June.
- The chapter is not looking at much more in terms of events until later this year.

- Deals are still happening. A couple were just announced today. They're small, credit-worthy deals that were pretty far down the pike. A skyscraper deal in Milwaukee has been struggling for five to six years, but announced today that something will be named in a few weeks. Bankers are busy, but I think it's Paycheck Protection Program (PPP) related and some refinancing. Overall market is still relatively optimistic.
- There was a sense that prolonged safety uncertainty is what takes this economy that we will have to suffer for 18 to 24 months from a recession to a depression. That will take us way beyond what we've had to deal with in recent history.

NAIOP Chicago/Abbie OLSEN:

- Illinois Governor has closed the state until May 30th with a probable extension. Projections are that the market will remain closed until the end of June with peak infection rate coming mid-June.
- Construction has been deemed essential, so there's been progress in all sectors.
- The chapter president believes office right now is really tough in terms of construction, because of elevator safety issues and being closer to others indoors. Office is probably operating at an 80% efficiency where industrial, (because it's more open air and spread out) is probably operating at 100%. No new office leasing right now, because no one can project out in terms of what the new office will look like. No one wants to commit to a 15 year contract.
- There's been no major drop in current construction costs, but that will come in the next few months.
- In terms of liquidity, there's no chance of getting anything new off the ground in the next few quarters unless you're in industrial. No new industrial spec happening this quarter but there's hope that will change towards the end of the year. Industrial is still getting new leases and where we're focused right now.
- The chapter is hopeful that we might have a golf outing in August with some alterations. We have had a couple of other summer events that have been postpone and we've transitioned everything to virtual.
- Our governor has outlined five phases for reopening the state. Maybe by January we can convene 50 people together, but there are some pretty strict guidelines on how we can move into each phase.

NAIOP Colorado/Kathie BARSTNAR:

- Surveyed approximately 48 board members and past presidents with approximately 45% response rate.
- The questions were: From one to ten where one is the most pessimistic and ten is the most optimistic, how do you see the retail/office/industrial market for the rest of 2020 and then how do you see it for 2021-2025? Then the same question was asked of them personally.

- The average result for retail was 2.14 for 2020. Very pessimistic and it goes up to 4.91 for 2021-2025. That's the biggest area where we're going to see challenges.
- In the office market, the average was 4.16 and it goes up for 2021-2025 to 6.84. The highs were as high as 8 going forward but the lows were as low as 4. That says we're pretty optimistic about office going forward.
- Industrial for 2020 is a solid 5 and for 2021-2025 it's up to 7.8. Industrial seems to be the one bright spot in the market so that bodes well for people wanting to attend the virtual I.CON.
- Personal was interesting. For 2020, responses from 1 to 10. It averaged out at 4. There are some people who are riding this ok and some who are struggling. From 2021-2025, it bumps up to 7.48 with a low of 5, and the high was a lot of 10s.
- The chapter is hoping to have the first face to face event in June for a golf tournament. The golf course would like to push us to reschedule for September.
- The mid-year forecast be virtual.
- A group is working to turn our property tour into a virtual property tour series of four separate sessions.
- Businesses in the state are starting to open. People are concerned about liability of the businesses and building owners as they open up. What's their liability if someone contacts Corona virus?

NAIOP Minnesota/Stephanie WOLF:

- A stay at home order is mandated through May 17th. It is expected to be extended through the end of May or possibly June.
- The chapter has cancelled all events through the summer.
- The golf event was supposed to be in July. Members and sponsors were surveyed about participation. It was split half and half. Restrictions at our golf course are going to make the whole thing impossible. Sponsors aren't allowed on the holes, tee times are required and a reception is not allowed. It might be postponed until September. Some events are planned for the fall and the chapter is optimistic they will go forward. Event and chapter sponsorships are going to be down in the near future.
- Public policy activities are 100% funded by voluntary contributions. The chapter anticipates much lower contributions in the short term, but hopefully those will come back up in 2021.
- Other virtual events have been very well received. Several more casual roundtables have been offered with up to 30 people and webinars with CE credits.
- Some members have been participating in our virtual events that have never or were rarely attending in our in person events.