

President's Car November, 2007

Some words about membership and insurance: the real world intrudes

Dear members:

We need your help.

In today's litigious and liability-obsessed environment, one of the things that makes it possible for divisions, regions, and 100% NMRA clubs to hold shows, meets, conventions, and open houses is the NMRA national organization's umbrella insurance policy. The benefits of this insurance are available to any NMRA-affiliated organization willing to follow the rules for its use.

Having the protection of the NMRA's umbrella liability policy means that an NMRA group in the U.S. or Canada can hold meetings, conventions, shows, and the like without the need to spend hundreds or even thousands of dollars on liability insurance. As long as a division, region, 100%-NMRA club, or other sanctioned group behaves responsibly, the group and its members are protected from economic ruin in case of disaster.

I recently learned that there are some NMRA divisions and regions that are not following the NMRA's basic regulations regarding membership. There are some divisions and regions that are accepting as "members" persons who are not members of the NMRA. There are even divisions and regions that have elected "officers" who are not even members of the NMRA. Some of these individuals have never been members, or have not been members for many years.

My first thought upon learning this was, why on earth would someone want to lead an organization he or she wasn't even willing to join? My second thought was that I needed to bring the problem to the attention of the Board of Directors and of our Legal Counsel. They were as concerned as I am. Our concern revolves around issues of fairness, questions of legal responsibility, and the possibility of loss of our umbrella liability insurance. I'll address our concerns in that order.

Fairness: Except for our Life Members, who joined under a different contract, it costs each of our regular members \$36 per year to belong to the NMRA. For that \$36, we each are entitled to services at the national, regional, and divisional level. These services have to be paid for. Many of them are paid for out of that \$36, and many more are paid for in some other way. If someone habitually attends and participates at any level of the NMRA without becoming a member, it is fundamentally unfair to those of us who have joined. And the more freeloaders there are, the more our members' dues have to be raised to pay for them. That's just unfair to all of us who have agreed to support and share in the benefits of the NMRA.

Legal responsibility: The NMRA's Regulations, our governing document, specifically and unambiguously state that every member, officer and director of a division or a region shall be a member of the NMRA. It is the legal responsibility of every elected officer at every level of the NMRA to follow this and every other regulation to the best of his or her ability. If an officer becomes aware that a regulation is not being followed and does nothing about it, he or she is guilty of misconduct and can be censured or even removed from office for not taking action. If a region or a division has an officer who is not a member of the NMRA, and thus is not a member of the region or division he or she allegedly leads, any action taken by that person could be considered legally null and void. This includes contracts, tax returns, and any other business conducted on behalf of the organization.

Liability insurance coverage: This is the one that scares me the most. If something happens at a show, meeting, meet, or any other event where NMRA liability insurance is

assumed to be in force, and if it is discovered by the insurance company that the affected NMRA entity has “members” on the books who are not in fact NMRA members, or that the entity has “officers” or “directors” who are not NMRA members, and who are entering into contracts and agreements for a group of which they’re not even a member, it is very possible that the insurance company will not be willing to extend coverage for a claim. And since the conditions under which we are granted the insurance would have not been followed, the insurance company would be well within its rights.

If the NMRA insurance is not available, it is possible that each individual member of the NMRA entity in question could be sued and held personally liable, to the tune of thousands or millions of dollars. It is also possible that the person or persons posing as NMRA officers and directors would also each be personally held civilly and criminally liable. And while legitimate officers and directors of corporations are not ordinarily held personally liable in the event of a loss, that legal protection disappears if those officers and directors are aware that irregularities have occurred and have done nothing to correct them.

In other words, if your region or division has “members,” “officers,” or “directors” who are not NMRA members, you and they are playing with a loaded gun. You may not have the insurance coverage you think you have. Yes, calling people “members” who aren’t is unfair and the practice raises tough legal questions, but what scares me the most is that some of our divisions and regions are exposing themselves and every one of their legitimate members to potential legal and financial problems, the extent of which we can’t even imagine.

Our Legal Counsel has explained to us that, now that we are aware of this problem, we must take steps to get our house in order. Otherwise, the insurance company could cancel our insurance, or even refuse to cover us in the event of a claim. We don’t even know at this point whether this is a relatively small or a widespread problem.

Since we can't possibly travel to each division within the 15 U.S. and Canadian regions and certify their membership rolls, we will ask each division and region to do that for us. Before we renew each U.S. and Canadian region's and division's insurance for the new year, we are going to ask each region and division to certify in writing that every one of their members, officers, and directors is a member of the NMRA.

If a region or division cannot issue this certification, it will not be eligible to operate under the protection of NMRA liability insurance and will either have to go without or purchase insurance on its own. If a region or division issues the certification while knowing it not to be true or not bothering to check, the legal and financial consequences in the event of a claim could be enormous.

This is not a topic that I wanted to write about, nor is it something that I would have imagined would ever be necessary. I promise you that the NMRA's officers, directors, and volunteers and paid staff will do everything we can to continue to deliver value, service, and protection to our members. The NMRA is a big organization, and things happen that we can't anticipate or control. You can help ensure the integrity of our organization and the safety of all our members by demanding that the officers and directors who serve you are fellow members of the NMRA.

While I'm sorry that I have to bring this to your attention and that the actions of a few are jeopardizing the well-being of the many, I'm glad that we found out what was happening before we had our insurance canceled in the face of a heavy claim. That's the good news in all of this.

Ironically, the individuals who are engaging in the behavior that jeopardizes all of us will probably not see this column, since they are not members and thus do not receive *Scale Rails*. So I am asking our members to help us out. If you find out that the actions of a few in your area are putting our many faithful members at risk, please let me know about it, as specifically as possible. My contact information is in the front of the magazine. We will then attempt to get the situation under control.

Then we can all get back to model railroading.

Mike