A Risk Management Bulletin

Resort to Safety

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The importance of contractual risk transfer:
Certificates of insurance

One of the most important risk management tools you have available to you is the ability to transfer risk to another party. Take advantage of that opportunity; just be sure you are transferring the risk to the other party and not the other way around.

There are many factors to consider when transferring risk to another party — or when you are taking on the risk of others. Risk transfer can include additional insured status, certificates of insurance, and hold-harmless and indemnity agreements or contracts.

There are typically three categories of insureds. **Named insureds** are individuals, corporations, and limited liability corporations. **Automatic insureds** (only with respect to the scope of their duties to the business) include employees, volunteer workers, organization members, spouses, and executive officers. **Additional insureds** are added by endorsement to a policy on an individual basis, per request, either on a specifically named basis or a blanket basis.

When and why should you add someone as an additional insured?

You should add someone as an additional insured when you are contractually required to do so. For example, typical rental agreements for heavy equipment and office equipment have this requirement. Construction contracts will typically outline such requirements for project owners, general contractors, and subcontractors. Also, most real estate agreements and leases between land owners like the USFS and the ski area (or an off-premises location that the ski area rents) will contain additional insured language.

Your area will require additional insured language for certain premises operations and activities such as:

- Independent camps and ski schools
- Special events hosted by an independent promoter
- An event you host on property not owned by your area

continued
Why would you want to be named as an additional insured?

Being named an additional insured can help you receive defense under another party’s policy, or help your policy provide defense for another party — it can go both ways. If named an additional insured you are transferring the risk to the other party and your policy limits, self-insured retention, and loss history are protected.

Certificate of insurance (COI)

Certificates of insurance are a snapshot of insurance coverage in force as of the date the certificate was issued. Review these certificates and know what to look for. When you are requesting a certificate of insurance of others or preparing one to give to others:

- Review the insurance carrier name, term of coverage, and limits of liability.
- If an additional insured is required, ensure that the intended scope of coverage is defined.
- Require the verbiage “on a primary and noncontributory basis”
- For events, require the organizer’s insurance to cover participants in the event (some policies have participant exclusions, which may not be revealed on the certificate).

Don’t depend on a certificate as a stand-alone tool. It should be backed up by a contract outlining the requirements listed above. The certificate should then state that the policy has contractual liability, or you should get a copy of an endorsement adding your organization as an additional insured to the other party’s insurance policy.

Hold-harmless and indemnity releases

Hold-harmless agreements are agreements for one entity to assume the legal liabilities of another entity arising out of certain activity as defined in the contract. The goal of these agreements is to shift the liability to the person or entity with the most control over the risk.

It’s important to use proper legal wording and adhere to state laws and requirements, so consult with your legal counsel on these topics. Insurance is a resource to respond to the liabilities transferred through an indemnity agreement.

Indemnification and hold-harmless agreements and contracts

A contract is an agreement between two or more parties that creates obligations that are enforceable by law. In a ski-area setting, such contracts can come into play in areas such as rental units, employee housing, special events, transportation services, and construction.

When entering into an agreement or contract with others, ask: Do I need to have them protect me, or do I need to protect them? When contracts are not in place, your area will often be the one to pay the claim. Don’t just accept a contract sent to you by the other party. It will almost always favor them. Negotiate! Be sure to have your legal counsel review all contracts to ensure the consequences of the language will be what you intend.

Finally, it is best to have one point person at your resort review all contracts and certificate requests, to be sure your organization is consistent in the approach taken. When in doubt, contact your insurance representative — we’re here to help.

For more information, contact Helen Richards
800-528-7730 | helen.richards@wellsfargo.com.