Risk Management

by Todd Seiders, CLSD

Transfer your risk…Don't get stuck paying for something you didn't do

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"Risk Management" is the process of measuring or assessing risk and developing strategies to manage it. An essential component associated with the business of risk management is known as "Risk Transfer", which transfers the risk or responsibility for certain incidents that may occur to someone else.

For example, if a hotel manager hires a landscaping company to provide landscaping services to the hotel, and in the course of the lawn being mowed the cutting blade flies off of a lawn mower and damages a guest's car, the hotel should NOT have to pay for the damage. The manager and the hotel did not cause the damage, and in fact, they had no control on how the landscaper maintained his equipment. The landscaping company, or their insurance company, should pay for the damage. This is *Risk Transfer,* transferring the risk or liability for loss to the person, service provider or vendor who caused the loss.

Four risk transfer commandments

In order to properly transfer risk, the prudent hotelier must set up a "Risk Transfer Program" at his or her hotel. Anytime a hotelier hires a contractor, vendor or service provider from **outside** the hotel, or the hotel's management company or ownership, the hotel should do the following things:

1. **Obtain copies of the outside service provider's Certificates of Insurance for liability insurance.** A Certificate of Insurance proves that the outside service provider does in fact have liability insurance and protection. If an outside service provider does not have liability insurance, you do not want them doing work or providing service at your hotel. If the service provider has no liability insurance in place, then the hotel will be held liable in the event of injury or loss.

2. **Obtain copies of the outside service provider's Certificate of Insurance for Workers' Compensation insurance.** All states require any employer who has one or more employees to provide either third-party or self-insured Workers' Compensation insurance. This protects you, as recent court cases have held that property owners are responsible for service provider injuries if the service provider did not have Workers' Compensation insurance. No hotel wants to pay for another employer's employee injury. If a service provider has employees, but does not have proof of Workers' Compensation insurance, you do not want them doing work or providing service at your hotel.

3. **Demand that the service provider add you and your hotel as "Additional Insured" on the above Certificates of Insurance.** Being added as "additional insured" on the service provider's insurance policy means that the service provider's insurance policy also covers you and your Hotel. Adding you as "additional insured" to their insurance policy will cost the service provider a very small fee; but if they want your business, it should be worth it to them.

4. **Incorporate and sign an agreement or contract in which the service provider will "protect, indemnify, hold harmless and defend" you and your hotel in the event of the service provider causing loss, injury or damage to anyone.** When a subsequent claim does arise, such specific contract language makes it clear to all who may be called upon to review or interpret the contract at a later point in time (e.g., attorneys, judges, juries, or insurance investigators) that the service provider willingly and knowingly agreed to assume liability for specified risks associated with the performance of their duties for which they were contracted. In other words, the service provider knew that the risk was being transferred from the hotel to them. Incorporating such a "Hold Harmless" agreement into any vendor and service provider contract is the lynchpin to affirming and authenticating risk transfer. Keep in mind that such contracts will bear the signatures of both the hotel's representative and the service provider; hence, any subsequent attempt by the service provider to deny or avert the transfer of risk will be extremely difficult.

Hold harmless agreements

Here is sample wording for a hold harmless, indemnification agreement:

Most service providers will have you sign a service agreement or contract, *but beware*…read these contracts very carefully! I have recently seen service provider contracts that contain wording *that releases* the service provider from any liability if they cause damage, injury or loss, while doing work at your hotel. Caveat Innkeeper! Read and understand all contracts thoroughly and seek out the advice of your hotel's legal counsel when in doubt. Whatever you do, do not sign any agreements with service providers that release them from liability unless your hotel is willing to assume such risk.

Conclusion

Remember the mantra of good business sense:

Service providers should pay for any damages, losses or injuries that they cause while doing work at your business. The hotel should pay for any damages, losses or injuries that the hotel (or its staff, furniture, equipment, or services) causes.

Protect yourself by obtaining proof of the service provider's insurance (certificates of insurance), having the service provider add the hotel as an "additional insured" on their insurance policies, and by having a hold harmless, indemnification, and duty to defend agreement or contract in place.

Enclosed is a sample Certificate of Insurance to help explain what to look for when obtaining a copy from your service provider. ✧

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INDEMNIFICATION AND INSURANCE

(sample)

To the extent permitted by law, you agree to protect, indemnify, defend and hold harmless the Hotel/Business, *(Your company name here)*, and the owner of the Hotel/Business, and their respective employees, insurance companies and agents against all claims, injuries, losses or damages to persons or property, law enforcement charges, governmental fees, charges or fines, and costs (including reasonable attorney's fees), arising out of or connected with your services, work, tools, equipment, vehicles, and presence on our property, except those claims arising out of the sole negligence or willful misconduct of the Hotel/Business. You further agree to obtain and keep in force General Liability Insurance covering the event described in this contract with limits of not less than $1,000,000 per occurrence and to provide the Hotel with a certificate of insurance naming the Hotel/Business, *(Your Company name here)* and the owner as an additional insured for your services, work, tools, equipment, vehicles and presence on our property.

Sample Certificate of Liability Insurance

1. Producer or broker issuing the form

2. Insured's name and address

3. Insurers affording coverage

4. Type of insurance

5. Policy Number

6. Policy effective & expiration

7. Policy limits

8. Description of Operations/ Locations/ Vehicles/ Special Items, **<u>Listing Certificate Holder as an Additional Insured Statement should be found here; Additional Insured Endorsement should be attached.</u>**

9. Certificate Holder **That's You!** Your name should be here

ACORD CERTIFICATE OF LIABILITY INSURANCE — DATE (MM/DD/YY)

PRODUCER

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

INSURED

INSURER A:
INSURER B:
INSURER C:
INSURER D:
INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
	GENERAL LIABILITY COMMERCIAL GENERAL LIABILITY CLAIMS MADE / OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY / PROJECT / LOC				EACH OCCURRENCE	$
					FIRE DAMAGE (Any one fire)	$
					MED EXP (Any one person)	$
					PERSONAL & ADV INJURY	$
					GENERAL AGGREGATE	$
					PRODUCTS - COMP/OP AGG	$
	AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident)	$
					BODILY INJURY (Per person)	$
					BODILY INJURY (Per accident)	$
					PROPERTY DAMAGE (Per accident)	$
	GARAGE LIABILITY ANY AUTO				AUTO ONLY - EA ACCIDENT	$
					OTHER THAN AUTO ONLY: EA ACC	$
					AGG	$
	EXCESS LIABILITY OCCUR / CLAIMS MADE DEDUCTIBLE RETENTION $				EACH OCCURRENCE	$
					AGGREGATE	$
						$
						$
						$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATUTORY LIMITS / OTHER	
					E.L. EACH ACCIDENT	$
					E.L. DISEASE - EA EMPLOYEE	$
					E.L. DISEASE - POLICY LIMIT	$
	OTHER					

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

CERTIFICATE HOLDER | ADDITIONAL INSURED; INSURER LETTER: ____

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL _____ DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

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