

RISK TRANSFER

WHY BE ON THE HOOK FOR CLAIMS
WHEN SOMEONE ELSE SHOULD PAY?
HELP PREVENT YOUR BUSINESS
FROM BECOMING THE DEEP POCKET!

ALLIANZ RISK CONSULTING



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WHO PAYS?

A grocery store chain owner hired an electrician to install cable. The electrician fell to his death – costing the grocery store owner \$250,000.

A parts distributor sold a specialized foot pedal manufactured by someone else to a person injured in an accident – costing the distributor \$218,330.

A milk processor contracted with a small trucking company to haul milk to customers. Truck driver failed to stop at a traffic light and rear-ended a car with five passengers – costing the milk processor \$1,200,000.

An apartment complex owner hired a plumbing contractor who caused damage to the building – costing the apartment complex owner \$290,000.

What do these businesses have in common? Someone else should have paid the claim!

HERE'S WHAT WENT WRONG

GROCERY STORE OWNER

- No written contract.
- Electrician did not agree in writing to be responsible for injuries to himself and others.
- Grocery store owner responsible for damages.

THE DISTRIBUTOR

- Did not require the manufacturer to take responsibility for claims.
- Distributor was not named as additional insured under manufacturer's insurance.
- Distributor responsible for damages.

MILK PROCESSOR

- Did not make sure that trucker's insurance limits were adequate.
- Milk processor responsible for payment above trucker's policy limits.

BUILDING OWNER

- Did not require the plumber to take responsibility for claims.
- Damage to building caused by plumber.
- Owner absorbed loss.

WHY SHOULD YOU CARE?

FAILING TO PROTECT YOURSELF WILL COST YOU TIME AND MONEY, INCLUDING

- Time away from work to investigate the loss and help defend a lawsuit.
- Potential loss of customer goodwill.
- Direct payment of deductibles or uninsured claim items
- Increase in insurance premiums.

WHAT IS RISK TRANSFER?

Every time you hire a contractor, enter into agreements for services or products or lease out a building or equipment, chances are you sign a contract. It may be a formal contract or it may be on the back of an invoice, purchase order or rental agreement. Contracts often include language that transfer responsibility for accidents. The businesses in the examples did not transfer their risk to the responsible party. They failed to protect themselves and were stuck with the hassle and responsibility connected with those incidents.

HOW CAN YOU BETTER PROTECT YOUR BUSINESS?

When you enter into contracts with other parties, you usually have the opportunity to include language that will protect you and your business. We recommend that you use contract terms that will shift your increased exposure to claims from you and your business. This is called risk transfer, and it is done by using a written indemnity or hold harmless agreement, and by having you or your business named as an additional insured on the other party's insurance policy.

INDEMNITY AGREEMENTS

- What is an indemnity agreement? It is a part of a contract where one party promises to pay for another party's liability. For you and your business, it means that another party pays for your attorneys' fees and pays for your monetary damages if the claim was related in some way to the work performed under your contract.
- What should your contracts say regarding indemnity? Your contracts should clearly state that the other party to the contract will indemnify and defend you and your business for liability which arises from a) that party's negligence, and b) your company's negligence related to the contract. We recommend against the use of standard, pre-printed indemnity forms. Instead, we recommend that you tailor the indemnity agreement so you know for certain that your business increased risk will be transferred to the other party to the contract. If you think it's appropriate, you might want to consider developing one standard indemnity clause that you can use in most of your contracts, especially those with service providers (such as janitorial services, security services, exterminators and other contractors).

ADDITIONAL INSURED STATUS

What does it mean to be named as an additional insured? This means that you or your company are added as an insured on the other party's insurance policy for claims that arise out of your contract with the other party. Being an additional insured entitles you to the benefits of their insurance policy and will directly protect you. This, together with a favorable indemnity agreement, will maximize your protection.

What should your contracts say regarding the additional insured issue? Your contracts should provide:

1. That the other party will name you and your business as an additional insured for all liability which arises out of the contract.
2. That the limits of this other insurance be at least \$1,000,000 per occurrence or accident and \$2,000,000 in the aggregate;
3. That the other party's insurance policy will be primary to your business insurance policy; and
4. A requirement that the other party give you a copy of the part of its own insurance policy (within 30 days of the signing of your contract) that shows you as an additional insured and that the other contracting party's insurance is primary.

It's important that you obtain both the signed contract and a certificate of insurance

Which indicates that the first three points above are in place before any work begins!

Also, don't forget to get a copy of the other party's insurance policy as soon as possible.

DON'T WAIVE YOUR LEGAL BUSINESS RIGHTS

When you sign a contract where you agree not to pursue a claim against another party (even if that party causes damage to your property), you have waived your subrogation rights (commonly called a waiver of subrogation). For you and your business, it means that you will absorb the cost of the damages even though someone else caused them.

WHAT SHOULD YOU DO?

1. When you enter into a contract for repair or service to your property, don't give away your right to recover the damages that person or provider causes.
2. As a tenant, try to avoid signing a contract that holds the building owner harmless for any damage to your property.
3. As a building owner, try to avoid signing a contract that gives away your right to recover damages to your property caused by a tenant.

WHAT SHOULD I DO WHEN I NEED A SERVICE CONTRACTOR IMMEDIATELY?

Business owners are sometimes faced with the need for emergency services or repairs – such as when a water pipe breaks. You don't always have time to make sure that you are protected through a good risk transfer program.

What can you do? If possible, you should select one or more typical service contractors in advance, establish an on-going risk transfer program with them, and let your location managers know whom they can call when needed.

A GOOD RISK TRANSFER PROGRAM WILL ASSIST YOU IN PROTECTING YOUR BUSINESS INTERESTS.

Many publications are available that can provide information on risk transfer. For example, the International Risk Management Institute has a publication called "Risk Transfer." Also, consult with your attorney and your insurance agent for valuable and specific guidance for your risk transfer program.

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