The Camp Newsletter

October, 2020

WHY TRANSFER OF RISK THROUGH CONTRACTS AND CERTIFICATES OF INSURANCE ARE SO IMPORTANT FOR YOUR CAMP

Michael Labadorf CPCU
Executive Vice President

While camps still face unprecedented challenges, we are continually amazed and humbled by the resilience and optimistic views we hear from directors every day. Most everyone we speak to is preparing as best they can to open next summer. It is with this positive attitude in mind that we write this newsletter to remind you not to let your guard down as you still must focus on business fundamentals on top of everything else you have to do!

The legal system in the United States can be described as a “runaway train,” and for good reason. It seems no one is interested in personal responsibility and who is actually liable. If there is an injury then of course someone else must be liable and they should have to pay.

If your camp can be a target for a lawsuit no doubt you will be sued. Why should you and your camp’s insurance be prejudiced when the risk of that lawsuit, and its defense and ultimate payment, can easily and rightfully be put back on the responsible party? The answer is – it shouldn’t!

Over the years, we have found again and again that camps are very good at protecting their campers and running their programs. Although that is a great way to reduce lawsuits from camp parents, there are myriad of third-parties whose actions or inactions can cause you legal trouble. Outside vendors or contractors can be a source of legal liability: building contractors & trades, transportation companies, food service providers, arborists, rafting outfitters, propane companies, ropes course installers & trainers and any of the other dozens of third-parties you use to help operate your camp.

Our view has always been that if you hire an outside professional, that professional should come with all the tools they need to complete the job. One of these tools is a signed contract spelling out their duties, responsibilities and proper insurance.

Step-one is a proper contract signed by both parties. In addition to usual terms, when you are paying others for a job or service there should be a strong indemnity/hold harmless agreement in your favor to the fullest extent allowed by law. This is step-one in transferring risk of loss by contract from camp to them. With a well-drafted hold harmless clause, the other party is agreeing to defend you in the event of a suit arising out of their negligence; but few people have the financial resources or the desire to simply assume that liability on their own.

This is where critical step-two comes in. The contract must also have a detailed insurance clause that makes their insurance step in and stand behind that financial commitment to protect not only the contractor or vendor, but your camp as well. Why would you want to put a large six or even seven-figure claim against your own insurance when that loss should be rightfully defended, and paid for, by the responsible third-party who actually did the work that caused that claim?

This is routine in American business today and even more so as court awards continue to skyrocket. In fact most insurance companies, worried that their insureds will not follow these simple and cost-free steps, are now looking at their clients' use of outside third-parties and if they are getting signed contracts and evidence of proper insurance. If they are not, they may not be considered well managed Insureds and pose an unnecessary risk to themselves and their insurers.

A well written insurance clause in your contracts should require as a minimum:

-Commercial General Liability Insurance with minimum limits of $1 million each claim, $2 million aggregate (per project or job), including Products & Completed Operations and Personal Injury. No exclusions for height, action over, or labor law claims.

-Automobile Insurance, including Hired & Non-Owned Auto of at least $1 million per accident.

-Workers Compensation coverage with statutory limits in the state where the work is being performed.

-General Liability and Auto coverage must name your camps' operating entity and land ownership entity (if you have one) as additional insureds on a primary non-contributory basis and waive subrogation. Today many insurers will include you as an additional insured only if your contract with their insured requires them specifically to add you as an additional insured. **So read those certificates and policies carefully! If it says you are an additional insured "as required by a written contract" and you do not have that clause in a written contract, you are not an additional insured and their insurer with not protect you.**

-All required insurance must be evidenced by a certificate of insurance (and complete copies of policies if requested) that is produced at least one week prior to the work and remains in full force and effect throughout the term of the work or job. All insurers must be acceptable to the camp.

This is a basic overview of the actual insurance language that should be included in your contracts. The limits of insurance are also a minimum suggestion; but for higher-risk workers or activities the limits should definitely be higher.

We often hear that it is difficult in our remote location to find contractors with adequate insurance. All you can do is the best you can do to protect yourself – do not always take the lowest bid. There is a very good reason contractors with good insurance are usually more expensive. In the end, if the contractor or vendor does not carry adequate coverage that names you as additional insured, the claim will fall on your shoulders and your insurance rates will ultimately reflect what your insurers are forced to pay.

If you wish for more detailed information on what should be included in a well written insurance clause, or wish to talk this through, please contact us and we will be glad to help.