American Insurance Specialists

Navigating the Liability Safety Net
Understanding Primary & Contingent Liability

As an event promoter, for profit, non-profit corporation or recreational facility manager, your business operates on multiple risk levels simultaneously. From your direct primary operations to outsourcing and subcontracting, your operations represent a unique mix of direct and indirect risks.

Understanding how your liability insurance policy works and where you might be held responsible for someone else's mistake is the first step in protecting your business.

1. Premises & Operations: Your Direct Responsibility

Your most obvious risk is direct primary liability. This arises from the physical property you own or use, and the daily activities conducted on or off-site.

- **The Rule of Reasonable Care:** Your facility is legally required to conduct operations with reasonable care to avoid bodily injury or property damage to others.
- **The Employee Factor:** Because you delegate daily tasks to your team, the law dictates that an employee's negligence is automatically treated as your negligence. If a staff member leaves a walkway wet without a warning sign and a guest slips, your business is on the hook.

2. The Subcontractor Trap: Who Pays When Outsourced Work Goes Wrong?

To offer premier guest experience, you likely hire independent contractors or independent contractors—like third-party maintenance crews, security teams, or specialized recreation providers.

When you hire these teams, you are considered the "prime" or "general" contractor. While those subcontractors are responsible for injuries caused by their own negligence, the ultimate safety buck often stops with you.

Because you maintain general supervision over client operations, a failure to ensure a safe environment can result in a lawsuit against your facility—even if a subcontractor caused the hazard.

American Insurance Specialists PO Box 6230 Scottsdale, AZ 85261
Office 480.666.5520 Email: Underwriting@amriskusa.com www.AmRiskUSA.com

American Insurance Specialists

3. Vicarious Liability: Responsible Even When You Are Fault-Free

Can you be held legally responsible for a mistake even if you did everything perfectly?
Yes. This is a legal concept known as vicarious liability.

> ***The Blind Spot:*** *In certain scenarios, your facility can be held liable for the negligent acts of independent contractors—even if you did nothing to encourage the mistake and did everything in your power to prevent it.*

While a business is not normally liable for an independent contractor's mistakes, the law recognizes numerous exceptions that can quickly erase this protection. For example:

- **Negligent Selection:** You have a strict duty to hire competent, qualified contractors. If you hire a subcontractor without verifying they have the proper training, experience, licenses, and equipment, you can be held directly liable for their failures.

4. The Coverage Gap: Your Policy Does Not Protect Third-Party Vendors

A common and dangerous misconception among business owners is that their commercial general liability policy automatically covers everyone working on their behalf. It does not. Your insurance policy is designed exclusively to protect your business, your entities, and your direct employees.

Coverage does not extend to third-party vendors, subcontractors, or independent contractors. If a vendor causes a loss or an injury, your policy will not step in to defend them or pay for their mistakes.

Even worse, your own policy may fail to protect you from lawsuits arising out of these third-party relationships. If a guest sues your facility because of a subcontractor's negligence, your insurance carrier could deny the claim or exclude coverage if the risk is tied to an uninsured independent contractor. This leaves your business entirely exposed to potentially devastating legal and financial consequences.

5. The Reality of "Joint and Several" Claims

When a guest is injured due to a combination of a subcontractor's mistake and a gap in your facility's oversight, you may face joint and several liability.

American Insurance Specialists

This legal rule allows an injured party to sue you, the subcontractor, or both together. More importantly, it allows the injured party to collect the entirety of the financial damages from whichever party has the deeper pockets (usually the management facility and its insurance policy), regardless of who was more at fault.

Furthermore, any private waiver or contract you sign with a subcontractor attempting to exempt them from liability has no bearing on an injured guest. An innocent third party is never bound by your private business agreements. Always get a disclosure statement and liability release signed by your client informing them of and agreeing to your limited liability.

How to Protect Your Facility: The Three-Step Safeguard

To close these dangerous loopholes and insulate your business from third-party risks, you must implement a strict risk-transfer process before any vendor or contractor begins work:

- **Verify Sufficient Limits:** Never take a contractor's word that they are insured. Require them to provide a Certificate of Insurance (COI) proving they carry their own commercial liability coverage. Ensure their coverage limits are high enough to fully absorb a catastrophic claim matching the scale of your operations.

- **Demand "Additional Insured" Status:** Do not just verify their insurance—make sure you are a part of it. Require the vendor or subcontractor to formally name your facility as an Additional Insured on their policy. This forces their insurance company to defend your business and pay legal fees if you are dragged into a lawsuit because of their mistake.

- **Secure Primary & Non-Contributory Endorsements:** This additional option will ensure that the contractor's policy is designated as primary and non-contributory. This guarantees that if a claim occurs, the subcontractor's insurance pays out first, protecting your own policy and keeping your premium history clean.

Let AIS review your coverage today.

Don't wait for a claim to find out where your protections end. Contact our American Insurance Specialists risk management team today to audit your current liability policies and ensure your business is fully protected from both direct and hidden exposures.

Legal Disclaimer: *The informational materials contained in this article are provided for educational and informational purposes only and do not constitute formal legal advice. The contents are not intended to create, and receipt of them does not constitute, an attorney-client relationship. You should not act or rely upon any legal or risk-management information in this article without seeking the advice of an attorney.*

American Insurance Specialists PO Box 6230 Scottsdale, AZ 85261
Office 480.666.5520 Email: Underwriting@amriskusa.com www.AmRiskUSA.com