

### **Contractual Risk Transfer: Read the Fine Print**

This month's Risk Bulletin covers Contractual Risk Transfer. When agencies use another party's property for events, owners often require liability insurance. Review agreements like licenses or rights of entry to clarify each party's responsibilities.

An agency recently submitted a facility use agreement using a license from another public entity, which outlines insurance and indemnity requirements for a special event.

The insurance requirements language used are similar to those found in many agreements. It is important to read the language to ensure your agency's coverage through ICRMA will meet the insurance requirements. Excerpts of the insurance requirements are listed below.

- **Commercial General Liability.** Commercial general liability insurance written on an occurrence form with limits of not less than \$1,000,000 per occurrence, and a \$1,000,000 per location annual aggregate. Each policy must include coverage for liabilities arising out of Licensed Areas, operations, independent contractors, products and completed operations, personal and advertising injury, and liability assumed under an insured contract. This insurance must apply separately to each insured against whom a claim is made or lawsuit is brought, subject only to the insurance policy's limit of liability.
- **Commercial Automobile Liability.** When an automobile is used in connection with the use of the Licensed Areas, automobile liability insurance with limits of not less than \$500,000 per accident. Such insurance must cover liability arising out of a motor vehicle, including owned, hired, and non-owned motor vehicles, assigned to or used in connection with this License.
- **Workers' Compensation and Employer's Liability.** Workers' Compensation Insurance as required by law. Employer's liability limits not less than \$1,000,000 for each accident, \$1,000,000 as the aggregate disease policy limit, and \$1,000,000 as the disease limit for each employee.
- **The State of California, Judicial Council, and Court,** including their respective elected and appointed officials, judges, subordinate judicial officers, officers, employees, and agents, if any, have been added as additional insureds on the insurance policy being referenced, but only with respect to liability assumed by Licensee under the terms of this License.

**Can you determine if the ICRMA Memoranda of Coverages (MOCs) can meet the requirements above?**

The license agreement also contained this indemnity provision:

Indemnification. Licensee shall and hereby does indemnify, defend (with counsel satisfactory to the Judicial Council), and save harmless the Judicial Council, the Court, and their respective judicial officers, officials, directors, officers, affiliates, agents, deputies, representatives, servants, employees, successors, assigns, predecessors, divisions, branches, sureties, and attorneys, whether past or present ("State Parties") from any and all losses, damages, costs, liabilities, claims, expenses, judgments, fees, penalties, and interest, including, but not limited to, reasonable attorney fees and costs incurred by the State Parties, that arise from, relate to, or are in connection with, directly or indirectly, the exercise of this License by Licensee, its agents or invitees, or any other act or omission of Licensee, its agents or invitees, including the failure to comply with the obligations of this License. This indemnity shall apply to all losses, except for those losses caused solely by the gross negligence or willful misconduct of the State Parties. This indemnity obligation shall include, without limitation, consultant fees, investigation and remediation costs, and all other reasonable costs and expenses incurred by the State Parties, including claims for damages for decrease in value of any adjoining property. Licensee's obligation to defend will commence immediately upon the assertion of any claim or demand by or against the Judicial Council or the Court that is tendered to Licensee; shall apply to any claim that actually or potentially falls within the coverage of this indemnity provision, even if such allegation is or may be groundless, fraudulent, or false; and will continue at all times after such tender until each such claim is fully and finally resolved. Notwithstanding the foregoing, this indemnity shall not apply to those losses solely and directly caused by the gross negligence or willful misconduct of the Judicial Council, the Court, or their respective officers, employees, or agents. Licensee's indemnification and defense obligations under this section shall survive the termination or expiration of this License.

Understanding these provisions is fundamental for any party entering into a license agreement, especially where the risks include property defects, failure to perform contractual obligations, or claims brought by third parties unconnected with the event. A risk transfer of this magnitude may warrant supplementary insurance or risk management strategies to safeguard the indemnitor from unanticipated exposures. The following are risk transfer question that should be evaluated.

- **Are there any issues with the indemnity provision?**
- **What type of indemnity is this: Type 1, Type 2, Type 3, or something other?**
- **Are there any hidden exposures for the agency using the property?**
- **Based on the above, will the ICRMA MOC support the terms of the license?**

In next month's Risk Bulletin, we will review the indemnity to identify any potential pitfalls. In the meantime, review the material and produce your own analysis. Use the tools provided on ICRMA's webpage especially the [Insurance Requirements in Contracts Procedure Manual](#).



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Once you have completed your analysis, email it to Bob May, Director of Loss Control for a review at [biem@47.outlook.com](mailto:biem@47.outlook.com).