

Effective risk transfer can resolve liability exposures

by Reed Hardesty

Many municipal liability exposures can be resolved with proper and meaningful attention at the initial contract formation level.

A common claim we see is for injuries received during park and recreation programs conducted by vendors. Contracts that require the vendor's insurer to name your entity as an additional insured for injuries sustained from the activity are helpful in transferring the risk. Sometimes the claim allegation is towards the condition of your premises, and less about the activity. For example, the basketball drop-in participant who ran into the youth soccer goals in the corner of the gym, versus the jazzercise participant that slipped on the floor during the class.

If the vendor using your facility and has the contractual requirement of reviewing the location and letting your staff know of any deficiencies or concerns before starting their program, it can help address the premise versus the activity dispute that regularly occurs. If you are in a joint use agreement with a school district or other type of large user, it is especially important to address pre-event inspection responsibilities, as your staff may not be present during the large user's events.

WCIA also receives claims from people claiming damage from municipal operations that you contract for, such as police services, road striping, snow plowing, and road improvement projects. You should require the vendors insurance be primary and non-contributory, and should also name your entity as an additional insured for the operations of the project and the contractor. There may be claim allegations that are the natural consequence of the project, such as a structure shaking due to compaction during a sewer line replacement project. Even though the vibrations are required, it does not alleviate the contractor and its insurer from responding to the claim made against your organization. Since your organization is an additional insured, the contractor's insurer is required to investigate and respond to the claim, even if they were likely not negligent. That preserves your agency's loss run and assessment for liability claims, and defense for claims involving the actions of your agency's employees, not the employees of your vendors.