

HOW-TO



Special Events, Special Risks

CAREFUL PLANNING AND CLOSE SCRUTINY OF CONTRACTS HELP TO EASE RISKS

By Stephen W. Patterson, MBA, CPCU

From concerts to hot dog eating contests, boat cruises and survivor contests, special events are a big part of broadcasting. They are special in that they create a lot of attention and excitement for your station. They are also special in that they create risks and potential liabilities for your station. Certainly your promotions people are going to work hard to make your special events exciting and noteworthy. Here are some steps that you can take to develop a well-planned risk management program to help minimize the likelihood and cost to your station of bodily injury or property damage at your special events.

GET AN EARLY START

Getting an early start in arranging the insurance for a special event is very important.

If you call your insurance agent on a Thursday or a Friday for an event that weekend, he or she most likely will be able to make arrangements for the proper coverage, but the pricing will not be optimal.

Depending on the size and nature of the special event there may be quite a few documents – venue lease agreement, certificate of insurance from fireworks contractor, list of performing artists, and more – that the insurance underwriter will want to review. In addition, if it is a “high risk” special event, your insurance agent may have to approach underwriters at various insurance companies to secure satisfactory coverage at an acceptable price.

According to Tom Wing, networking segment leader and technology property

practice leader at Chubb Commercial Insurance, an advance checklist is important. “We prefer the completion of a special events checklist before insuring special events. Such a checklist, used as a tool, helps underwriters, agents and insureds identify areas of potential loss and determine the adequacy of control measures to contain loss,” says Wing.

For large or extraordinary special events, the underwriting process, including the gathering of the necessary documents, can take weeks. Your promotions people should understand that insurance for a special event should be a consideration when the idea for the special event is first being birthed rather than an afterthought in the last few days leading up to the special event.

CONSULT WITH YOUR AGENT

Your insurance agent’s primary responsibility is to make sure that the proper coverage is in place for you at the lowest possible cost. He/she knows your insurance program and what is or is not covered. Once you have decided to proceed with a special event, check in with your insurance agent and advise him/her what your station is planning. Your agent will be able to advise you whether any special insurance arrangements will be needed. He/she will also be able to offer suggestions as to how you might structure the special event to achieve the desired promotional impact, but at a reduced risk and premium cost.

“Our supervisors are trained to ‘think insurance’ when planning an event. Anything outside of the daily routine gets written up on a one-page activity report

that briefly explains the event or promotion,” says Laura K. Baker, vice president of finance at Draper Holdings.

“If there is an activity for which I have insurance questions or uncertainty I quickly get in touch with our agent and they let me know if any special coverage arrangements are necessary. I prefer to ask and be confident that we are adequately covered.”

LAURA BAKER, DRAPER HOLDINGS

In addition, keeping a close eye on contract provisions is critical. Buried within a venue/facility lease agreement are indemnification provisions. These provisions are often detrimental to your station as the lessee of the venue or facility. The typical indemnification provision requires that the lessee “...defend, indemnify and hold harmless the Lessor from any and all liability however associated with or howsoever arising out of Lessee’s event at the facility/venue.” So, if the lessor is providing security and security happens to get too aggressive in controlling certain patrons, thereby causing those patrons to sustain serious and permanent injury, your station is responsible for those claims.

Be sure to have legal counsel review the indemnification provisions of a venue/facility lease agreement very closely *before* the agreement is signed. A quick and easy solution is to insert wording to help protect your station. For instance, to reduce the station’s liability you may add the following wording to the indemnification provision mentioned above: “except for claims or injury arising out of the neg-

ligence or actions of the Lessor or Lessor's agents." Be sure to have the lessor initial or sign off on the addition of such language.

Mike Plantamura, corporate attorney at Radio One, comments that "We review the indemnification provisions of all of our proposed venue/facility leases and promoter contracts. Typically, the standard indemnification provisions, especially with venue/facility leases, seek to transfer liability to us as the lessee. It does involve a little back and forth but we engage in a dialog with the lessor and work to carve back the indemnification provision so that the lessor retains liability at least for certain high risk functions such as security and alcoholic beverage service, to the extent the lessor is managing those functions at the event."

USE QUALIFIED CONTRACTORS

You're a broadcaster, not a beer concessionaire or a professional concert promoter. As special events grow in size and uniqueness, it's advisable to increasingly rely on outside contractors for essential services. But in engaging an outside contractor, it's important that you ensure that the contractor has the financial security to respond to claims that may arise out of its services.

The legal doctrine of "joint and several liability" holds that multiple defendants can be held jointly (i.e., collectively) responsible for a judgment or severally (i.e., separately) responsible for a judgment. This is the foundation to the "deep pockets" approach to legal liability. If you hire an uninsured contractor, such as a group of off-duty police officers to provide security, and that contractor causes alleged or actual injury to patrons, the bulk of the legal liability could rest with you – your station will be named as a defendant in the lawsuit and may be the only defendant with financial resources and insurance. A key test in determining whether a contractor is "qualified" is if that contractor can provide you with a satisfactory certificate of insurance.

It's also common in the U.S. for commercial enterprises to require certificates of insurance from their contractors. You should require – not just request – certificates of insurance from all contractors you hire for your special events. Ideally,

your company – using its legal name rather than the station's call letters – should be listed as an additional insured. The certificate of insurance should provide information on the contractor's general liability, liquor liability, workers compensation, automobile, and umbrella liability insurance, as applicable. A satisfactory certificate of insurance from the contractor is your assurance that the contractor will be able to address complaints arising out of its services. Send the contractor's certificate to your agent and your agent will be able to advise you as to the quality and adequacy of the contractor's insurance.



DEDUCTIBLES AND WAIVERS

Keep in mind that if you're insured through a large deductible program, as stations for many BCFM members are, that you may incur considerable deductible expenditures (\$100,000, \$250,000 or even more) before the claims/damages from a special event are absorbed by your insurance company. In addition, insurers are prohibited by law from responding for punitive damages on behalf of their insureds in roughly half of the states including California, Florida, Pennsylvania and New York.

Waivers are helpful but they have their limitations. The more unique or unusual an event, the less effective a waiver will be. A ticket to a Dodgers game contains a waiver as does a ski lift ticket at Vail, and these will generally be effective as the hazards of attending a baseball game or going skiing are well known to the public at large. However, if the special event is unique (e.g., a "Fear Factor"-type event) the waiver will have limited strength because as plaintiff attorneys may note: "Ladies and gentlemen of the jury, my seriously injured client had no idea whatsoever as to the extraordinarily dangerous and truly outrageous hazards which awaited her when she signed this waiver which was forced upon her as a

condition of her participation." You should use waivers where possible, for bus trips and cruises, for instance, but keep in mind that although they may deter small complaints, they may not hold up in situations of serious injury.

MAKE IT FORMAL

The insurance for your special events will be handled more efficiently, more effectively and at a lower cost if you establish and implement a set of formal guidelines that incorporate procedures such as those discussed herein. Formal guidelines can easily – and repeatedly if necessary – be communicated to the promotions department and to others involved in your special events. Further, by establishing formal guidelines, the various risk management tools are strengthened. For example, in requesting a certificate of insurance from a security company, the promotions manager can just state that certificates are now mandatory under corporate policy.

"At Radio One, we implemented a formal, written policy and procedures manual for events about three years ago," says Leslie Hartmann, vice president of finance at Radio One. "The manual is very comprehensive. We have found that different people in the markets handle different events and there is also the issue of turnover. This formalized manual has made it more efficient in keeping our markets trained and consistent on all events. Also, our vendors are a little more accepting of providing us with certificates of insurance because they know that it is a corporate requirement, and they know what to expect in advance of entering into an agreement with us."

Special events can lead to big payoffs for a broadcaster in terms of revenue and positive publicity. But they can also lead to big payouts if a participant or spectator is injured or property is damaged. Your insurance agent can partner with you to develop a risk management program that can help minimize certain risks so you and your station promotions department can focus on making your events successful.

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