

Camp Management Liability — Evolving Risk

Our uncertain economic times serve as a reminder that the business of camp is full of change. When society, environments, and circumstances change, camp directors and owners are challenged to identify how the changes impact the risk in their camp community.

Managing Change and Evolving Risk

Risk is dynamic, characterized by uncertainty, and changes constantly even when the economy is healthy. Camp professionals know this well and witness changing risk every summer from one session to another and from one summer to the next. Risk awareness and identification is the essential first step in the risk management process.

Risk identification involves anticipation, the ability to see the consequences in certain circumstances. Put yourself in the shoes of your campers and staff. Keep adolescent and young adult risk-taking behaviors in mind. Risk management planners often approach the risk management process by separating risks based on the potential for injury to people (e.g. campers, staff, and members of the public) or damage to property. Keep thought processes open so your risk management plan addresses both tangible (e.g. buildings, equipment, and automobiles) and intangible (e.g. reputation, copyrights) property.

Once the risks have been identified, the hard work begins. The next step is evaluation. Ask yourself: What is the likelihood of injury or damage from each activity or each program location? Will the injury or damage happen frequently or infrequently? Will the consequences be minor, moderate, or severe? Is there a predictable pattern from the past or from someone else's experience to consider? As you and your team answer these and other questions, your plan begins to form.

Armed with your evaluation and information, the next step in the risk management process involves risk control — making decisions to reduce, avoid, or transfer the risk. The goal of the risk management process is to create a controlled risk environment. You'll want to enlist your entire risk management team and perhaps a risk management consultant in this step because you will be making decisions that may make the difference for someone's safety.

Examples of risk reduction techniques include the use of personal protective equipment such as seat belts and personal flotation devices. Risk avoidance techniques involve establishing rules. For example, requiring a minimum of two lifeguards to be present before the waterfront can be opened.

Risk transfer techniques typically involve the use of contracts requiring an assumption of risk where one party seeks to be held harmless and indemnified by the other party. Another risk management transfer technique involves seeking additional insured status under appropriate circumstances such as when an independent contractor, outfitter, or guide is used to conduct a program. What is the most common risk transfer technique used by camps? Buying insurance! That's right — an insurance policy is a risk transfer mechanism in which certain risks defined by the insurance policy are assumed by the insurance company for a fixed cost (the premium). What type of insurance is most common among camps and purchased more often than any other type of insurance? The answer is general liability insurance! But, is general liability insurance enough?

The short answer is no. General liability insurance no longer offers sufficient protection for camp professionals to rely upon exclusively. A more thoughtful response

requires a brief review of some of the risks general liability insurance includes and excludes.

Core but Limited

Commercial general liability insurance responds to claims alleging negligence for actions, or inactions, that cause injury to people and damage to other people's property — commonly referred to by insurance agents as bodily injury and property damage liability. Other risks insured include libel, slander, false arrest, unlawful eviction (often referred to as the personal injury offenses), and advertising injury liability — but not for mistakes such as infringement of copyright in your advertisements.

As risks evolve, the insurance industry clarifies and separates them, defines and redefines the protection afforded by their policies, and then includes or excludes the risk from the coverage grants in your insurance policies. An example is liability for environmental impairment risks commonly referred to as pollution. At one time, coverage for sudden and accidental pollution was included in all camp general liability policies. However, in 2011, the pollution risk is almost completely excluded from coverage under general liability.

Likewise, risks of injury from physical or sexual abuse and molestation were once automatically included in general liability. Today insurers start out excluding coverage and may offer a "buy back" for this risk if your camp qualifies within the general liability policy for an additional cost. Availability of the "buy back" also depends upon the insurance company that is underwriting your particular insurance policy.

Another risk that has been limited under the general liability policy's personal injury coverage is the evolving risk of the Internet. Most general liability policies exclude coverage for hosting Internet bulletin boards and chat rooms,

for example, and provide no protection for the breach of privacy and security risks associated with conducting business there.

The general liability policy, while providing coverage essential to every camp operation, has exclusions and limitations built into and attached to it that makes the overall protection afforded to camps by the general liability policy incomplete. The general liability policy is no longer sufficient on its own to protect the assets of camp operations from the evolving risks of business in the twenty-first century.

Growing Complexity

As known risks evolve and new risks develop, the insurance industry develops new approaches to insuring them. This can include adding additional protection to an existing policy (by endorsement) or the creation of a completely new type of policy to assume the evolving or newly developing risks.

Examples of the endorsement solution include insurance for physical and sexual abuse and molestation and camp director's professional liability. Endorsements providing coverage for these risks are added to general liability insurance policies.

An example of the insurance industry developing a totally new policy to respond to evolving risk is the creation of environmental impairment liability (pollution) insurance.

Evolving Risks, Other Solutions

The insurance industry has developed a management liability insurance "package," which insures against certain management liability risks not insured by the general liability policy. This package combines stand-alone policies for directors and officers liability, employment practices liability, and fiduciary liability.

Nonprofit and religiously affiliated camps have seen the value of this management liability protection sooner than their private camp counterparts and have been buying all or part of this management liability package for some time. More private camps are considering various parts of this package and are encouraged to continue to do so.

continued on page 66

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Risk Management continued from page 65

Directors and Officers Liability
Whereas general liability insurance responds to bodily injury, property damage, personal injury, and advertising injury liability caused by negligence, directors and officers insurance responds to wrongful acts which allege financial loss from mismanagement. Don't confuse this insurance with camp director's professional liability, which is an endorsement to the general liability policy with a different purpose.

Employment Practices Liability
Claims for financial loss associated with wrongful employment practices are not insured by general liability. Employment practices liability insurance was developed to respond to allegations of wrongful acts, such as wrongful termination, unlawful discrimination, and sexual harassment in the workplace. Don't confuse this protection with insurance for physical and sexual abuse and molestation of campers, which is provided by endorsement to the general liability policy.

Fiduciary Liability
The Employee Retirement Income Security Act (ERISA) made fiduciaries, defined as a business entity or an individual who exercises discretionary authority in managing or administering a pension or benefit plan, responsible for financial loss from breaches of their fiduciary duty. Those with fiduciary duty include trustees of pension and profit sharing, 401k, and 403b plans. Don't confuse fiduciary liability insurance with employee benefits liability, which is often provided by endorsement to the general liability policy. Fiduciary liability may be written to include employee benefits liability, but employee benefits liability does not include fiduciary liability.

Other Risks, Other Solutions

Environmental Impairment
Federal and state laws and regulations protecting the environment have been in existence since the 1970s. Most of these laws and regulations were directed at "big" business, manufacturers, and the oil industry. As the risk of pollution evolved, the insurance industry defined

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pollutants very broadly to include irritants, or contaminants whether in solid, liquid, or gaseous form, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, or waste.

Virtually all insurance for pollution has been eliminated from the general liability policy, leaving your camp exposed to all risks of environmental impairment emanating from your camp premises. Camps are conservators of the environment, so the main exposure appears to be from sudden and accidental events such as rupture of above-ground gasoline storage tanks, or accidental discharge or malfunction of sewage and waste water treatment facilities. Site pollution liability insurance has been designed to insure these risks.

Cyber Liability

Liability arising out of the use of the Internet and doing business online is also inadequately insured by the general liability policy. New and evolving risks include breach of privacy, infringement, misappropriation of intellectual property, employment discrimination, and spreading of computer viruses via e-mail, among others.

Various types of insurance policies have been developed to respond to what has generally been tagged by the insurance industry as cyber liability. This risk continues to evolve.

Caveat Emptor

“Buyer beware” is important to keep in mind when considering any new and evolving risks, as there can be real differences in the scope of the protection among various insurers. Take the thoughtful approach and take the time to investigate a couple of solutions to these evolving and changing risks. Enlist your insurance broker or risk management / insurance consultant to get the best results.

Don't risk a lot for a little.

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