

Reviewing Contracts 101

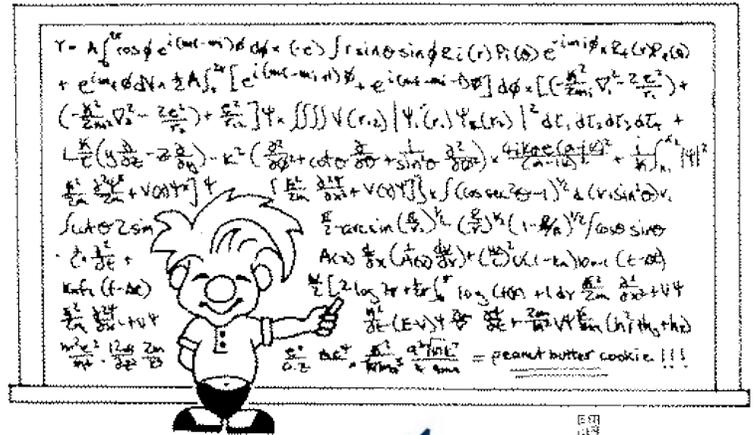
Contracts are complicated

In the "good old days," making arrangements for functions of the organization were far simpler; over time, it has become more complex. In addition, many third-parties are now requiring that a contract be signed before a venue or a service can be utilized, and we typically find that every contract is different.

The essence of any contract is the agreement that for certain compensation, certain services will be provided. For example, a facility is being rented (the service) and your organization is expected to pay a specific fee as set forth in the contract (the compensation).

If you have reviewed these contracts, you will agree that it is not simply setting these terms, but addressing the numerous other conditions also being required. It is in this review of the contract that you need to be aware of some of the common issues, as you consider obligating your organization under the contract.

One of the more subtle, but far reaching issues of the contract is the transfer of liability from one party to another. This can be done explicitly in the contract with wording, such as, "while in your use, you are responsible for any property damage to the rented facility" or the less explicit requirements referred to as indemnification (being put back whole) or hold harmless clauses. Ideally the contract would make a specific mention of this point under a titled section, but that is not always the case. Therefore, it is critical that the entire contract is thoroughly read to detect for any and all contractual obligations which you are being asked to comply.



We are seeing a dramatic increase in the number of event contracts.

Be concerned with any of the following verbiage in your contracts:

- ✓ Hold harmless
- ✓ Indemnification
- ✓ Additional insured
- ✓ Primary and non-contributory



MJ INSURANCE
SORORITY DIVISION

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Some examples

Here are some examples of the more common transfers of liability, though it bears mentioning that you cannot transfer all liability, but can certainly minimize your liability to claims:

1. The hotel contract requires your organization to hold them harmless for any bodily injury of your attendees while on their property.
 - If you agree to this term and there is a bodily injury incident, then you have forfeited the opportunity to sue the venue for an unsafe physical condition in the property because you are holding them harmless.
 - Logically, the entity that has the greater “control” of the conditions of the physical property should be the one bearing the greatest liability, so holding them harmless is not preferable.
 - Your agreement may be for exposures that are not covered by your insurance policy, though a remote possibility, it could occur.
2. The sorority chapter is hosting an event at the local park where you have contracted with a caterer to provide the food and alcohol for the event. The caterer is requiring evidence of your insurance coverage and wants to be added to your insurance policy as an Additional Insured.
 - The most alarming trend is the request for a non-insured to be added to your policy and given the full rights under the policy. In doing so, you forfeit the opportunity to sue this “Additional Insured” for their actions, which may have well been the only reason why a claim occurred. The classic example here would be the caterer not practicing good risk management and over-serving someone who becomes intoxicated and then assaults another attendee at the function. Your insurance policy would be obligated to defend this caterer and potentially pay for any judgment against them. We prefer to have each party to a contract rely on their own insurance coverage and then rely on the “courts” to determine where negligence lies and ultimately where the liability rests for paying for injury or damages.

**Add·ition·al
In·sur·ed**
Additional Insureds are specifically designated parties that have the same benefits afforded by the insurance coverage that you have as a named insured. This means that you will have to share your policy limits with any Additional Insured to your location.



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If renting a facility, points to consider:

Do a walk-through of the facility and make reference in the contract of any visible property defect or damage that was present before your function was held. This eliminates the possibility of the venue alleging that you damaged their property while holding the event in their facility.

Review the contract carefully and look for indications of transferring the risk with the following verbiage:

Additional Insured
Hold Harmless
Indemnification

If you are unsure whether or not unfavorable language is in the contract, [complete this form](#) to have your contract reviewed. After consulting with an attorney specializing in contract review, MJ has taken a little different approach when it comes to reviewing contracts containing indemnification and hold harmless clauses. Over the years, we have found that most contracts contain these clauses and more times than not, we were unsuccessful in having the clauses removed. Amending or rewriting a contract is more of a legal issue rather than an insurance issue; therefore, MJ is not in a position to provide legal advice on these clauses. We will still be reviewing contracts for insurance requirements, i.e. Additional Insured and Primary Additional Insured; however, when the only items embedded are hold harmless and indemnification clauses we are advising that the contract meets the insurance review. This is not saying that you shouldn't be mindful of these conditions and take greater precaution than you normally would with your event because of these contractual requirements.

Additional Insureds are specifically designated parties that have the same benefits afforded by the insurance coverage that you have as a named insured. This means that you will have to share your policy limits with any Additional Insured to your location. There is no premium charge for this substantial coverage that they receive.

Additional Insureds increase the number of potential claims that could be made against your insurance policy. As they are covered by your policy once you sign a contract obligating your organization to list them as an Additional Insured, you lose the opportunity to sue them if they were negligent in their responsibilities under the signed agreement. Potentially, your policy would have to pay for a claim and the defense costs of a claim in which the Additional Insured was grossly negligent and in which you had little to no responsibility.

If renting a facility and alcohol is being served by either the facility or an outside caterer, here are some points to consider (in addition to the other facility example above):

- ✓ Look for the publicly displayed liquor license for the venue or ask to see a copy of the license for the vendor serving the alcohol to ensure that it is in force.
- ✓ Secure a Certificate of Insurance which includes the minimum limits on the next page plus the coverage for Liquor Liability, which is in addition to their General Liability coverage.



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If hiring a contractor or contracting with a venue/service, points to consider:

Secure the services of only an insured contractor or company and ensure that they have the following *recommended* minimum limits of liability insurance by getting a copy of their Certificate of Insurance (where applicable):

General Liability	\$1,000,000 per occurrence
Liquor Liability	\$1,000,000 per occurrence
Automobile Liability	\$1,000,000 per occurrence
Workers' Compensation	\$500,000 per accident

The main reason why we recommend that your contractors have their own insurance is so your organizations coverage would not have to respond to a claim that was caused solely by your contractor. The reason why we recommend the above minimum limits is that these are **industry standards** and should we need to file a claim against the subcontractor for damage or bodily injury they caused, we would want sufficient limits to access or what we refer to as subrogation against a third party.



**IF HIRING A
CONTRACTOR,
REQUEST A COPY OF
THEIR CERTIFICATE
OF INSURANCE!**

**For additional
resources, review
[www.mjsorORITY.com!](http://www.mjsorORITY.com)**

