

# Risk Management and Insurance Guide

For the  
Adventure,  
Ecotourism  
and  
Alpine Skiing  
Industries

*Discover our true nature*



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## Foreword

The Canadian Tourism Commission (CTC) is committed to promoting the growth and profitability of Canada's tourism industry. To assist tourism operators in the adventure, ecotourism and skiing industry, the CTC commissioned RM Solutions, a risk management consulting firm, in conjunction with Cameron and Associates Insurance Consultants to develop this Risk Management and Insurance Guide. Much of the information in this guide, however, is sufficiently general to be of interest to other tourism operators.

The CTC hopes that this guide will provide a better understanding of risk management and insurance concepts for tourism operators and thereby assist them in obtaining insurance coverage that is both responsive and cost effective.



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## Introduction

Insurance plays a vital role in our business and personal lives; yet for most people it is confusing, with contradictions and restrictions that appear to favour the insurance industry over the consumer. This guide provides a basic understanding of insurance principles and offers best practices for managing risk in the adventure, ecotourism and alpine skiing industries.

This guide is focused on tourism operators, who are referred to as “you” and “your” throughout the document.

## Insurance vs. Risk Management

Relying exclusively on insurance to cover the risks of your business is no longer viable. Business organizations worldwide have adopted “risk management” principles to address the increasing legal and financial obligations to manage the principal risks of their business.

For the “emerging” risks that appear to be particularly prominent in your business, insurance may not be responsive and cost-effective or it may simply not be available. Risk management techniques will improve your ability to identify, analyze, control and finance a broad spectrum of risk faced by your business. Risk management may also assist you in purchasing lower-cost insurance.

The risks inherent in the tourism industry are significant, particularly for the adventure, ecotourism and alpine skiing sectors. Professionalism and adherence to high standards of care on health, safety and environmental issues are becoming determining factors that influence consumers in making their vacation decisions. Risk management can enhance the ability of your operation to meet the increasing expectations of your clients and can help ensure the continued prosperity and growth of the important tourism industry in Canada.

Professional risk management consultants are available to advise you on how best to manage your risks. The section entitled, “Risk Management as an Emerging Business Skill,” page 12, deals with risk management in greater detail.

## Basic Insurance Requirements for the Adventure Tourism, Ecotourism and Alpine Skiing Sectors

All business owners may purchase various types of insurance coverage. However, the most important coverage for members of the tourism sector is provided by commercial general liability (CGL) insurance and this section focuses on liability issues and important coverage requirements and gives a brief overview of other insurance.

### Commercial General Liability Insurance

This policy responds to bodily injury or property damage claims made against you by third parties (i.e. clients and the general public), which arise out of your activities or operations. The policy also pays the necessary legal costs to defend your company and, in most cases, your employees against claims.

There is a legal principle that the claimant bears the burden of proving the negligence of the operator and this negligence must be a direct and proximate cause of the injury or damages sustained. Your legal obligation to the public and especially customers is extremely broad, however, and these claims can be difficult and costly to defend. Consequently, they are frequently settled in favour of the claimant.

Commercial general liability policies are written on either an “occurrence” or a “claims-made” basis. This is an important distinction to note when purchasing a liability policy.

An “occurrence” liability policy provides coverage for bodily injury and property damage claims brought at any time and arising out of events that happen within the policy period. Regardless of when the claim is made, as long as your liability policy was in force when the bodily injury or property damage event occurred, you would be covered.

A “claims-made” liability policy provides coverage for claims made and reported by you during the policy period, regardless of when the actual bodily injury or property damage arose. So if you are no longer a policyholder when a claim is made against you, you would not be covered.

It is therefore recommended that you purchase an “occurrence” basis policy whenever possible.

### Policy Limits

Policy limits are usually purchased in layers beginning with a primary layer of \$1,000,000 per occurrence. Excess layers can be added to provide higher limits of up to perhaps \$100,000,000 and will usually be priced at lower rates than the primary layer.

Consider the following in determining the appropriate amount of insurance to purchase:

- The likelihood of a settlement or court award;
- The potential size of an award, including the potential for multiple claimants; and
- The requirement for protecting the total assets of your company.

A minimum limit of \$1,000,000 is recommended.

### Deductible

Most liability policies do not impose a deductible on the bodily injury section of the policy. However, a minimal deductible (\$250 to \$1,000) may be written on the property damage section of the policy. In some cases, it may be more advantageous to you to have a bodily injury deductible. You would have to pay the deductible amount in each claim made against you, but the premium may be significantly reduced. Your risk management consultant or insurance broker should be able to advise you when this option is worth considering.

### Coverage Territory

Although your operations may be solely in Canada, your clients may be from other countries. Since clients may file lawsuits in other countries against you, it is recommended you purchase a policy with the covered territory being anywhere in the world. This is important because the cost of defending a foreign action can be extremely high.

### Material Change in Risk

Should your company undergo a material change in risk, this should be reported immediately to your

broker. A material change in risk would be a change in the operation of your company that may result in increased claims activity.

For example, if you are operating a ski hill that is normally closed in the summer and you build and run a summer water slide, you risk increased claims activity. If you do not report the change immediately to your insurer, you may not be covered for resultant losses.

## Exclusions

General liability policies have basic exclusions that should be understood and reviewed with your broker. Other coverage areas are excluded from the general liability policy, as they are covered under separate policies, i.e., automobiles, aircraft or watercraft, professional acts of directors and officers. These other policies may cover third-party liability or damage done by third parties to your property. These items will be further discussed under “Other Insurance,” on page 9.

## Umbrella Liability Policy

An umbrella liability policy will provide excess limits above a general liability policy and other liability policies such as automobile liability and garage automobile liability.

## Excess Liability Policy

An excess liability policy can provide excess limits above primary and umbrella liability policies to provide coverage to settle a large claim. The additional premium should be a fraction of the premium of your first, or primary, policy. Limits of liability can usually be purchased up to \$100,000,000.

## Important Coverage Extensions

### Contractual Liability

This means liability that you have assumed under a “contract,” for example in a “hold-harmless” agreement that you enter into with a tour operator or landlord. (The concept of “hold-harmless” is explained in detail on page 18.)

It is important that liabilities you assume under contract should not extend beyond what would be normal under common law or a statutory condition.

Further, you should never assume liability for the sole negligence of another party under contract. You may be required, in fact, to disclose certain contracts to your insurance broker and the insurance company. If in doubt, seek advice from your legal counsel, risk management consultant or broker.

### Host Liquor Liability

At times, a company will serve alcoholic beverages at special functions, include them as part of their meal packages or provide liquor service in a licensed bar area on the premises. An operator’s liability that arises from providing liquor service may be excluded from liability policies unless the coverage for host liquor liability is specifically added to the policy. All operators who sell liquor in the course of their business activities should have host liquor liability coverage added to their commercial general liability (CGL) policy. The projected annual sales volume will be used to determine the premium.

#### *Example*

A guest of your ski hill drinks too many beers in the late afternoon and, while driving home, falls asleep, crosses the centre line and collides with another vehicle. He suffers serious injuries, the driver of the other vehicle is killed and a passenger becomes quadriplegic. You may be faced with claims from the guest, the estate of the third party and the passenger in the other vehicle, alleging that your bar staff served the guest until he was drunk and unable to drive the vehicle safely.

In such circumstances, you would seek coverage under a Host Liquor Liability endorsement of a CGL policy.

### Non-Owned Auto Liability

For rental vehicles, this extension provides contingent liability coverage in excess of the basic limits carried by the rental agency.

### Tenant’s Legal Liability

If you lease property, you must purchase this coverage, as it is excluded under your commercial general liability policy.

### Voluntary Medical Expenses

The insurance company will pay for certain “reasonable” medical expenses incurred by your clients or the general public, at your request. The types of expenses covered are the cost of an ambulance, crutches and emergency medical treatment. The extension permits an operator to authorize payment of immediate treatment and ambulance charges. The policy will likely carry a sub-limit, or an amount less than the overall policy limit, for each person. For example, the limits of liability of the overall policy may be \$1,000,000, with a sub-limit of \$2,500 per person for this coverage.

### Incidental Medical Malpractice

This is coverage for damages arising out of the rendering of, or failure to render, professional medical services, such as first aid. This not only covers the liability of your company, but also the liability of any employees and medical professionals or first aid persons you employ, who render first aid or medical services.

### Employee Benefits Liability

This is coverage for damages claimed by an employee, former employee or beneficiary as a result of the negligent acts, errors or omissions in the administration of an employee benefits plan. For example, if an employee submits a claim under the employee benefits plan and you, the employer, improperly administer the claim causing a coverage problem, this section of the policy will respond.

### Advertiser’s Liability

This is coverage for claims arising out of your advertising activities, provided this is incidental to your business and not a service provided to the public for a fee. The coverage is for claims made against you for libel, slander, copyright infringement or plagiarism.

### Product Liability

There is coverage when an “occurrence” takes place away from your premises, after you have relinquished control or ownership of a product, resulting in bodily injury or property damage to another caused by one of your products. For example, a guest purchases a pair of

skis from your pro shop. While using these skis, he sustains an injury and alleges the skis and bindings are defective. You would seek coverage under this section of your commercial general liability policy.

## Claims Reporting

The following steps guide you through the process of what to do when an accident or injury occurs:

- Provide necessary help and assistance;
- Make a report of the circumstances that includes witness names and statements;
- Report the incident immediately to your insurer or broker; and
- Do not say anything, nor admit liability nor fault to third parties, as this could compromise your insurer’s investigation or defence.

Insurance companies insist on prompt reporting of claims and may deny coverage if they can demonstrate that the defence of the claim has been adversely affected by late reporting. Few policies have specific reporting requirement time lines, but in all cases, you cannot go wrong by reporting all incidents which may result in claims to your insurer as soon as you learn of them.

Once a claim has been reported, you should closely monitor its progress until conclusion. Co-operate fully with the insurance company and the claims adjuster assigned to investigate. Do not provide information to any other parties unless authorized to do so by your insurance company.

## Other Insurance

### Automobile Insurance

Automobile insurance provides coverage for third party liability and accident benefits arising out of the use, ownership or operation of an automobile. If you are an operator who regularly or occasionally transports members of the public, sufficient policy limits are essential.

Increased limits can be obtained through an excess/umbrella liability policy, with the automobile insurance scheduled as underlying. The policy should

be extended to provide contingent coverage for non-owned autos such as rental cars. The Commercial General Liability section of this guide offers additional information on page 7.

*Policy Coverage:*

- Third Party Liability
- Accident Benefits (where mandatory)
- Uninsured Automobile (where mandatory)
- All Perils or Collision and/or Comprehensive

## Property Insurance

Property insurance protects your business against loss arising from damage or destruction of specified property. Some policies have a co-insurance clause that specifies a certain percentage of insurable values that must be reported and insured. If you do not report at least this percentage of insurable values, you may be subject to a co-insurance penalty when a claim is presented.

*Example*

You have a co-insurance clause in your property policy requiring that you declare at least 80 per cent of the total value of your insurable property. Your insurance values are \$1,000,000 but you only report \$500,000. You have a loss in the amount of \$50,000 and seek coverage under your policy. Unfortunately, you only reported 50 per cent of your insurable values. Therefore, your insurance company will cover only 50 per cent of your loss, or \$25,000.

*Policy Coverage:*

- Property of every description including buildings, contents, stock and equipment, written on a blanket basis
- Written on a replacement-cost basis (optional)
- Can cover losses caused by “all risks” or “named perils”
- Business interruption insurance, which protects against loss of income in the event of damage to your property, if it is covered under the property policy
- Boiler and machinery Insurance

You should make an annually updated list of all insurable values.

## 3-D Crime Insurance (Dishonesty, Disappearance and Destruction)

3-D crime insurance provides you with a wide variety of coverage against employee dishonesty, mysterious disappearance of money and the destruction that sometimes occurs in the commission of a crime such as robbery, burglary or theft of your property. There are several additional coverages that can be added to this policy by way of insuring agreements.

*Policy Coverage:*

- Employee dishonesty
- Premises coverage (for thefts from the premises)
- Transit coverage (for thefts en route to the bank)
- Forgery or alteration
- Counterfeit currency

## Professional Liability or Directors’ and Officers’ Liability Insurance

This insurance provides coverage against liability arising out of the negligence in rendering professional services. For directors and officers, claims arising out of decisions or wrongful acts are covered.

## Key Players on the Insurance and Risk Management Team

### You, the Insured Client

- Are the most important member of the risk management team;
- Know your business, your clients and the risks; and
- Are in control of, and responsible for, all activities and decisions.

### Risk Management Consultants

- Are seasoned professionals with both insurance and management experience;
- Can assist you with:
  - Insurance renewals;
  - Loss prevention programs;
  - Claims programs;
  - Developing new strategies to obtain insurance coverage;
- Can assist the broker negotiate the insurance premium that your business pays;
- Have many contacts in the insurance industry; and
- Are good resources for information.

### Insurance Brokers

- Work with the insured client and risk management consultants to identify areas requiring insurance coverage;
- Place the insurance coverage with appropriate insurance companies;
- Negotiate the insurance premium, terms and conditions;
- Keep an eye on the financial rating of the insurance company to ensure there will be funds to pay claims;
- Have developed long-term relationships with insurance companies, so can be helpful in difficult situations; and
- May provide value-added resources such as:
  - Loss Prevention
    - Property and safety engineering inspections;
    - Review of signage;
    - Accident review and analysis; and
    - Review of building plans.
  - Claims Assistance
    - Claims audit;
    - Accident review and analysis; and
    - Claims-settlement negotiations.

### Insurance Companies

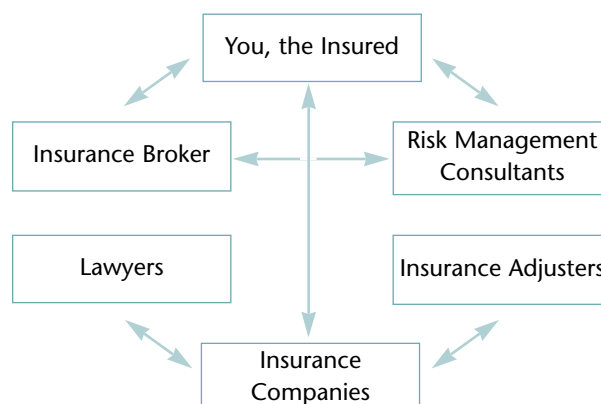
- Provide insurance policies to cover your business against loss;
- Can provide safety and loss prevention assistance such as:
  - Property and safety engineering inspections;
  - Review of signage;
  - Accident review and analysis; and
- Pay on your behalf the claims covered under your policies.

### Insurance Adjusters

- Receive reports of claims and incidents from your insurance company;
- Investigate each loss to determine the circumstances, the damages and your potential liability for such a loss; and
- Settle claims on behalf of your insurance company.

### Lawyers

- Handle claims made when statements of claim have been issued; and
- Manage the litigation process and/or settle claims on behalf of your insurance company.



## Risk Management as an Emerging Business Skill

As indicated in the Foreword to this guide, insurance alone does not provide an adequate response to the legal and financial obligations you may have to the public and your employees. A sound risk management program will enhance your ability to access comprehensive and cost-effective insurance.

### Risk Management Defined

Risk management has been defined in many ways over the years. The following comprehensive definition demonstrates the value of risk management to every organization.

Risk management is a strategic process that will protect the assets and ensure the financial stability of an organization from the consequences of competitive business decisions. Risk management will reduce uncertainty and the potential for accidental or unanticipated loss and will provide the basis for maximizing opportunity.

Risk management is a core skill for any business, and most effective when it is promoted at the senior management level and practised throughout the organization.

An effective risk-management program has the following basic elements:

- Senior management and board directors are committed to a broad-based, strategic risk management process. This commitment must be practised at all levels of the organization, but particularly at the operating level.
- Written risk management policies and procedures must be established for the most prominent risks, with specific objectives and targets.
- There are clearly defined roles and responsibilities for managing and controlling risk.
- Performance evaluations include specific risk management objectives to ensure accountability.

- Adequate resources and tools are allocated to ensure goals and objectives can be met.
- Ongoing employee training is essential.
- There are testing and monitoring of all programs and procedures, particularly emergency and business recovery plans, with continual improvement as the goal.
- Regular reports include independent audits prepared for senior management and board directors. These reports provide concise information regarding the status, including deficiencies, of all risk management programs.

### Risk Management Mission Statement

Successful risk management programs have a mission statement that is signed by the chairman of the board, president or both. The statement outlines the overall philosophy and dedication of the company towards risk management and its implementation. The risk management mission statement is usually a one-page document that is posted prominently where employees will see it and where it will be a constant reminder of its importance.

### The Risk Management Process

The risk management process applies certain principles and proven techniques to the broadest spectrum of risk. Risk management is always a work in progress.

The table below provides an overview of the four main areas of the risk management process and the key components of each.

Risk Management Process	Key Components
1. Risk Identification	<ul style="list-style-type: none"><li>• Knowledge of exposures through on-site inspections, discussions with management/staff;</li><li>• Review of products, services, processes and contracts;</li><li>• Review of historical activities and losses; and</li><li>• Identification of possible risk scenarios.</li></ul>
2. Risk Analysis	<ul style="list-style-type: none"><li>• Loss frequency and severity;</li><li>• Probability of occurrence;</li><li>• Maximum possible loss;</li><li>• Maximum probable loss;</li><li>• Consequences of loss;</li><li>• Possible impact on each stakeholder; and</li><li>• Public perception.</li></ul>
3. Risk Control	<ul style="list-style-type: none"><li>• Due diligence process;</li><li>• Occupational health and safety standards;</li><li>• Environmental standards;</li><li>• Fire protection engineering;</li><li>• Crisis and emergency plans;</li><li>• Business recovery plans;</li><li>• Claims and litigation management;</li><li>• Risk communication; and</li><li>• Continual monitoring, audits.</li></ul>
4. Risk Treatment	<ul style="list-style-type: none"><li>• Contractual transfer;</li><li>• Risk retention/deductibles;</li><li>• Insurance/self-insurance/no insurance; and</li><li>• Alternative risk financing.</li></ul>

## Success Stories

### BLUE MOUNTAIN RESORTS LTD.

Collingwood, Ontario

Blue Mountain, Ontario's largest mountain resort, is a four-season recreational facility destination, located 1.5 hours north of Toronto and 11 km west of Collingwood, on the southern shores of Georgian Bay on the Niagara Escarpment. The resort comprises 36 ski/snowboarding trails and two snowboard parks, serviced by 15 lifts; an alpine slide ride; a raft rider tube slide; water slides; the Blue Mountain Inn; a resort village development; the 18-hole Monterra Golf Course; the five-court Monterra Tennis Dome; and the Monterra Pavilion. Gord Canning is President.

A few years ago, the premiums charged by Blue Mountain's insurer were becoming too high, as the insurance company became less interested in insuring ski operations. The resort management shopped around for their liability and property insurance needs and found that their history of high maintenance standards and a good safety record helped them gain the interest of other insurance companies.

They explained their extensive risk management program to the prospective insurers, which included the following: careful planning of the layout of trails to avoid cross collisions; designated routes for the resort's service and maintenance staff; padding of fixed objects such as towers; and the implementation of a safety patrol program to warn customers who were skiing/boarding out of control.

Once Blue Mountain decided on an insurer, the insurance company sent out inspectors to the resort to examine the lifts, trails, etc. It was important to give a breakdown of the relative volume of each activity, so the premiums could be appropriately based on the average risk, rather than the riskiest activity.

Blue Mountain continues to work closely with its broker, insurance company inspectors and adjusters, keeping them well informed. They are happy to report that, little by little, their premiums are starting to come down. Blue Mountain has also just recently created a full-time year-round position for a risk manager/health and safety co-ordinator.

This success story highlights the following key elements in getting the best possible insurance coverage, while reducing your total cost of risk:

- Implementing a risk management program and hiring a risk professional;
- Describing all facets of your operation to the insurer;
- Giving the insurer a breakdown by volume of all activities; and
- Working closely with your broker, insurance company inspectors and adjusters and keeping them well informed.

## Strategies for Reducing or Controlling Your “Total Cost of Risk”

No matter how you look at it, your business needs insurance; and insurance is expensive. However, there are certain steps or strategies that can be taken to try to reduce your overall insurance costs, or “Total Cost of Risk.”

These strategies should be discussed with your insurance broker or risk management consultant well in advance of your insurance renewal.

### Multi-Year Policies

Multi-year policies may reduce or stabilize insurance premiums, as premiums are guaranteed for a set time period, which negates the need for the time-consuming renewal process. However, these policies may be somewhat difficult to negotiate as they are based on predictable loss experience, which is difficult to achieve in the adventure, ecotourism and alpine skiing industry.

### Deductible Options

Deductibles can be set at various levels. Credits in the form of reduced premiums are given when you accept higher deductibles. You must evaluate the cost-benefit of assuming higher deductibles.

### Developing a Positive Underwriting Profile

Developing a positive underwriting profile is one of the most important aspects in the renewal process. The information that is provided to your broker must be comprehensive, accurate and delivered well in advance of your insurance renewal. It is a time to gather glossy brochures that show off your business, develop background profiles on your professional staff and to provide as much information as possible to demonstrate how well organized your business is. Among the items in Business Profile Checklist, immediately following, are manuals. These are extremely important tools as they outline the processes in place to deal with significant situations that may

arise, such as how to handle a medical emergency or evacuation, or general tips and procedures on how to prevent losses from occurring.

Insurance companies need to feel confident about the risks they underwrite. They are dependent on information from several sources, including the insurance broker, risk management consultant and safety engineers. Safety engineers provide advice on a variety of safety and loss prevention matters.

### Business Profile Checklist

The following business profile checklist will assist you in gathering and preparing all the information necessary to develop a positive underwriting profile:

- Insurance questionnaires and application forms
- Claims experience for the previous five years
- Brochures and advertising literature
- Description of all business activities
- Client profiles
- Maintenance procedures
- Automobile listings
- Schedule of values for buildings, contents, equipment and stock
- Business interruption value worksheets
- Engineering inspections
- Background profiles of all professional staff
- Membership in professional associations
- Risk management mission statement
- Health and safety mission statement
- Safety standards, procedures and programs
- Loss prevention manuals
- Environmental standards, procedures and programs
- Hazardous materials handling manuals
- Disaster and emergency response plans and resources
- Emergency medical plans and equipment
- Copies of signage, waivers on tickets, contracts and agreements that acknowledge the assumption of risk by the public or the transfer of risk to another party.

## Loss Prevention or Reduction Through Transfer of Risk

As indicated throughout this guide, loss prevention plays a significant role in the risk management process. Along with surveys, questionnaires and physical inspections, there is another important piece of a loss prevention program called “risk transfer.” This refers to an attempt to transfer all or part of the risk through indemnity and “hold harmless” clauses in written agreements or waivers on tickets or signage. (For explanation of “hold harmless” agreements, see page 18.)

When developing or reviewing these types of wordings, it is best to involve a lawyer, insurance broker or risk management consultant in the process. Each will have a slightly different perspective on the verbiage, while the goal is the same: to have the risk acknowledged and assumed by the public or transferred to another party. Remember all signage, waivers and contracts, etc., should be reviewed on an ongoing basis to ensure they meet changing industry and legal requirements.

The following are a few ways that risks can be transferred:

### Signage

The use of proper signs can significantly reduce both the number of accidents (if third parties obey the signs) or reduce your exposure to liability (if third parties ignore or disobey signs) where an injury or accident does occur. Examples of signs and when they should be used follow:

To point out the obvious dangers of the activities or operations, e.g.:

- Skiing can be dangerous
- Not responsible for items left in this area
- Not following all safety precautions and guidelines may result in serious injury or death

To point out any unusual dangers, e.g.:

- Expert hill—Not for beginners
- High water levels
- Keep arms and legs inside the vehicle at all times

To point out dangers to specific population, e.g.:

- Children under 1.43 m (56”) tall not permitted
- Children under 12 must be supervised at all times by an adult
- This trail requires a high level of expertise, experience and physical stamina

Generally, it is up to the facility owner or operator to draw the attention of a guest or third party to risks inherent in the activity, operation or property. The greater the risk or the more hazardous the activity or operation, the greater the onus is on you to alert anyone likely to be exposed to that risk.

The existence of a sign that was read by the third party or that was placed where it was impossible to miss can assist you in responding to claims made by third parties arising out of activities that were forbidden or reckless.

The absence or inadequacy of signs can limit or nullify otherwise good legal defences. A risk management consultant or loss prevention expert can assist with location and wording of signs that may be appropriate to your operation.

### Waivers

More effective than signs, waivers can provide a legal defence to claims that arise out of your activities. Even where the accident arises out of your negligence, a properly worded waiver can assist you in defending a claim made against you. Participants in all dangerous activities, sports or operations should be asked to read and sign a waiver form before undertaking the activity. The same waiver form may be used, where appropriate, for spectators who may be exposed to injury.

The wording of the waiver form is critical to its effectiveness in assisting in the defence of claims. Every word is important and appropriate legal and risk management consultant advice at the outset, or at the beginning of each season, can pay large dividends in reducing claims costs.

If a signed waiver form is inappropriate or impractical, a waiver clearly printed on the ticket issued, in conjunction with clear visible signage on the property, can assist in the successful defence of claims. Attendees at a professional baseball or hockey game enter into

such waivers by purchasing a ticket. Lift tickets or day passes contain such waivers. Waivers might be of more value if they are easily visible and on the front of the ticket, preferably on a portion that is not surrendered.

It is important to remember that waivers, signed or unsigned, are a legal defence to a provable claim. As such, it is up to you, the defendant, to prove that they could be easily understood, were adequate and are applicable to the claim.

A good risk management practice is to combine the use of signs, waivers on tickets or bills of sale, and signed waiver forms.

The following example of broad-based waiver wording was taken from the back of a ski-lift pass purchased in the 1999-2000 ski season at Whistler Blackcomb. We must stress that this waiver wording was developed for use in the province of British Columbia and was specially designed for the operations at Whistler Blackcomb.

## NOTICE TO USERS OF THESE FACILITIES

### EXCLUSION OF LIABILITY – ASSUMPTION OF RISK – JURISDICTION THESE CONDITIONS WILL AFFECT YOUR LEGAL RIGHTS

#### PLEASE READ CAREFULLY!

As a condition of use of the ski area facilities, the Ticket Holder assumes all risk of personal injury, death or property loss resulting from any cause whatsoever including, but not limited to, the inherent risks of skiing and snowboarding, the use of ski lifts, collision with natural or man-made objects or with skiers, snowboarders or other persons, travel within or beyond the ski area boundaries, or negligence, breach of contract, or breach of statutory duty of care on the part of Blackcomb Skiing Enterprises Limited Partnership, Whistler Mountain Resort Limited Partnership, Intrawest Resort Corporation, Intrawest Corporation, Mountain Employment Company Ltd. and their employees, agents and representatives (hereinafter collectively referred to as the "ski area operators"). The Ticket Holder agrees that the ski area operators shall not be liable for any such personal injury, death or property loss and releases the ski area operators and waives all claims with respect thereto. The Ticket Holder agrees that any litigation involving the ski area operators shall be brought solely within the Province of British Columbia and shall be within the exclusive jurisdiction of the Courts of the Province of British Columbia. The Ticket Holder further agrees that these conditions and any rights, duties and obligations as between the ski area operators and the Ticket Holder shall be governed by, and interpreted solely in accordance with the laws of the Province of British Columbia and no other jurisdiction.

### THE SKI AREA OPERATORS' LIABILITY IS EXCLUDED BY THESE CONDITIONS PLEASE ADHERE TO THE ALPINE RESPONSIBILITY CODE

This pass is not transferable or refundable and is revocable for misconduct  
or for breach of the Alpine Responsibility Code.

### PLEASE READ THE EXCLUSION OF LIABILITY AND ASSUMPTION OF RISK NOTICE ABOVE

## Transferring Risk to Others

There are several other ways of transferring risk to others, such as hold harmless agreements used in contracts and contracting others to perform services that carry higher risk. These concepts are explained further below.

### Hold Harmless Agreements

One method of transferring risk is by contract or agreement. A hold harmless agreement or a hold harmless clause in an agreement can impose a legal obligation in contract on a party to assume liability to pay claims that the other party may be legally liable for.

#### *Example 1*

As the owner/operator of a golf course, the local municipality asks if they can hold a winter carnival on your golf course. In order to protect the golf course from claims arising out of the winter carnival, you should ensure there is a hold harmless clause in the agreement with the municipality. The clause should state that the municipality agrees to hold harmless, indemnify (pay losses) and defend the golf course from all claims arising out of the winter carnival activity.

#### *Example 2*

You are the owner of a white water rafting operation and are approached by a raft manufacturer to try out a radical new design of a raft. In order to protect you from increased exposure to claims that may result from deficiencies in the design or manufacturing of the raft, you may demand a hold harmless agreement. The manufacturer would agree in the contract to indemnify and defend you against any claims arising out of the new rafts.

#### *Example 3*

You contract out snow and ice removal on your parking lot to a maintenance company. As part of the tender process, you may wish to insist that the contractor enters into an agreement with you that contains a hold harmless clause wherein they will indemnify and defend you for any claims made against you or them.

You should remember that a contractual agreement such as a hold harmless agreement is only as good as the ability of the other party to pay to carry it out. If an entity has no insurance coverage or the insurer does not extend coverage, it may be difficult to enforce the agreement and you may end up having to defend yourself even with such an agreement in place. It is important to be adequately prepared to defend yourself or access the appropriate insurance coverage.

Hold harmless agreements should be carefully worded and you should seek legal assistance to determine if they are appropriate to the circumstances of your business.

### Assuming Risk From Others

Great caution should be exercised in signing agreements where you are providing the hold harmless agreement and agreeing to indemnify or defend the other party. Business practices may dictate that in order to be permitted to operate you may be required to enter into contracts that have such clauses with various parties.

Your risk management consultant, broker or lawyer should be able to assist you in deciding when to enter into these types of contracts and what wording would be appropriate. It is important to confirm with your insurer that your insurance policy will respond to protect you from the contractual liability to other parties that may arise.

### Alternative Risk Transfer Methods

As an alternative to transferring the risk contractually, you may wish to consider transferring to other parties those parts of your operation or activities that are especially hazardous.

#### *Example 4*

You operate a ski hill and decide to contract out the operation of the ski school to a third party. You may avoid liability for injury on your premises during a ski school session, since another party is providing that service.

## Success Stories

### ASSOCIATION DES PRODUCTEURS EN TOURISME D'AVENTURE DU QUÉBEC (APTAQ)

APTAQ is an association of independent Quebec adventure travel/tourism businesses. Its mandate is to represent and promote their interests in Quebec and to offer them the advantages associated with being part of a group.

In 1997, the administrators of APTAQ set out to negotiate an insurance policy for its members. Several APTAQ members (outfitters) were finding themselves unable to obtain insurance coverage due to the perceived “risky” nature of the activities that they offered. Secondly, many members who were insured felt that they were paying very high premiums. Some premiums actually represented half of their total revenue.

APTAQ contacted a brokerage firm in Montreal to negotiate a policy on their behalf. While the insurance companies that the broker approached at first seemed intrigued by the potential revenue that such a program could generate, ultimately they were not prepared to accept the potential risk associated with some of the members’ activities (e.g. kayaking, mountain climbing, dogsledding).

The last hope, according to the broker, was to go overseas and present the case to perhaps the best known insurer in the world. This insurer “has a reputation and history for adopting a more liberal approach to certain risks, and that is what we were counting on,” says the broker.

After two months of negotiations, the insurer finally agreed to issue a policy. Not only had they agreed to insure each and every activity, but they also did so at substantially reduced cost.

Administrators of APTAQ say that the new insurance policy now available to its members plays a large part in attracting new members. There are presently 50 outfitters insured (for up to \$2,000,000 in public liability) under the APTAQ policy, and that number increases every week.

This success story highlights the following key elements in getting the best possible insurance coverage, while reducing your total cost of risk:

- A group or association of tourism operators may be able to negotiate a more advantageous insurance policy for its members; and
- It is worth checking to see if an association or group you belong to offers group insurance to its members (risk purchasing association).

*Example 5*

You operate an adventure ecotour that incorporates bungee jumping at an isolated canyon footbridge. You contract out the bungee-jumping operation to the instructor, who provides the equipment, instruction and supervision of this activity, and therefore assumes the risk.

Good business practices dictate that, where possible and practical, you balance your expected profit from an activity against the risk of loss from exposure to claims. Where the reward-risk analysis appears positive, you take on the activities, but you reduce your remaining risk of losses through contractual and other transfers.

## Success Stories

### AVENTURES DOUCES PLEIN AIR INC.

Saint-Laurent, Quebec

Aventures douces Plein air specializes in biking tours, but also offers canoe, kayak and hiking adventures. Marcelle Chénier, the company founder and president, describes her experience in obtaining insurance for her business:

At first, we had a great deal of difficulty in finding a company that would insure us at a reasonable price. They were not familiar with the types of services we were offering and needed to be convinced that we knew what we were doing. That's when I decided to put together a file on our company and its services, just for the insurance company.

I described my university certificate in outdoors studies, which included courses in law, how to organize groups, camping in winter, etc. I described the thorough training that we give to our tour guides, including security, health measures, and a Red Cross course in first aid. I told them that we always use three guides for every 40 to 45 people on the tour. This makes our tours safer. When we received our accreditation from the Federation of Cycling, I added that to the file. I also described my previous experience in the Ringette Association, as a coach, organizer and decision-maker, because I think every little bit counts.

When all this information was put together, it really helped because it showed that we were well structured and that I, as president, knew my field really well. It also helped that the insurance representative who reviewed our file was an outdoors person too. We obtained our public liability insurance at a good price. I have been insured with the same company for eight years now and all is going well.

This success story highlights the following key elements in getting the best possible insurance coverage, while reducing your total cost of risk:

- Implementing safety measures and documenting them;
- Putting together a complete file on your company and its services;
- Describing all relevant outdoors experience and safety measures and providing copies of certification on file; and
- Contacting your broker annually with updates on your business and any planned changes.

## Risk Purchasing Association

Risk purchasing associations have been successful in providing competitive insurance for companies and organizations with similar risk profiles that individually have experienced problems purchasing insurance. A risk purchasing association can offer purchasing leverage in negotiations with insurers on rates, terms and conditions, as well as obtaining other benefits such as safety engineering services.

The main advantages of a risk purchasing association are:

- Lower insurance premiums for the group than individual members can normally achieve;
- Common policy language that provides unique coverages tailored to the exposures of the members; and
- Stable insurance capacity, meaning that the policy is less susceptible to cancellation or premium increases because of individual losses.

A risk purchasing association requires a common set of business objectives, a relatively homogeneous group of members and adherence to certain standards established by the association and the insurance company.

## Forming a Risk Purchasing Association

Forming a risk purchasing association is not difficult, but does require a commitment to the process and some resources. A trade association or affiliation of members can provide the necessary co-ordination and resources.

Some of the issues to consider are:

- The use of a consultant to co-ordinate and manage the process;
- The development of a members' survey that will identify common problems and issues and will determine the members' interest and commitment of resources;
- The identification of common objectives to be achieved;
- The establishment of minimum standards for participation in the program;
- The development of a business profile to promote the risk purchasing association to the market;
- The selection of an insurance broker to market the risk and obtain competitive premiums, terms and policy conditions;
- The selection of an insurance company and a long-term commitment on price and services.

Some of the other benefits members may derive from a risk purchasing association include the ability to deliver risk management products, such as loss prevention services, claims handling services and educational seminars, to members who might not otherwise have them because of cost or lack of resources.

Other benefits of forming a purchasing association include the potential for creating:

- A forum for communication and sharing of knowledge;
- Health, safety and environment standards and protocol;
- Loss prevention services;
- Emergency response plans and resources; and
- Search and rescue coverage.

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## Summary

It is important to review your insurance coverage with your broker or risk management consultant on a regular basis to ensure that your business is adequately covered. You should immediately report any significant changes in your business to your broker, as they may constitute a material change in risk.

An insurance and risk management team can assist you in identifying, analyzing and treating risks that may negatively impact your organization. When regular team meetings are held, you can discuss areas of concern and develop action plans to deal with them effectively.

As insurance is only one aspect of protecting your business from loss, it is recommended that a risk management program be developed, implemented and continuously monitored and improved. A sound risk management program will assist you in managing your risks and will lead to reducing not only the cost of your insurance premiums but also other costs associated with operating your business.

Another important aspect of minimizing loss to your organization is to transfer risk through the use of signage, waivers and contractual agreements that include hold harmless agreements. There is no substitute for well written legal wordings specifically designed for your organization.

Risk purchasing associations can be an effective way of obtaining insurance, especially in cases where coverage is difficult or costly to secure. Consider discussing this approach with other members of your industry, as they may also be interested.

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## Glossary

The following terms are either used in this guide or are terms that you may encounter in dealing with your insurance broker, risk management consultant, insurance company, insurance adjuster or lawyer.

### Adjuster

An insurance adjuster represents the insurance company on investigations and dealings with settlement of claims. An insurance adjuster may be a salaried employee of an insurer or may operate an "independent adjuster's" office. In that case, he is assigned claims by the insurance company and represents the company in settlements.

A public adjuster is employed by a member of the public to represent the insured in negotiations with the insurance company. A percentage of the settlement amount is usually taken as compensation. Public adjusters do not act for insurance companies.

### All Risk Policy

A property insurance policy that insures against loss by all perils not specifically excluded.

### Broker

An insurance broker is an independent businessperson who acts on behalf of prospective insurance purchasers to place insurance with insurance companies. The insurance company pays the broker a commission, usually a percentage of the policy premium you pay.

### Business Interruption Insurance

Insurance to cover business expenses and loss of income or profits that results from a fire or other insured peril.

### Comprehensive Dishonesty, Disappearance and Destruction Policy

A broad form of blanket fidelity bond extended to cover many allied risks, such as burglary and forgery. Some of the sections can be purchased separately and there are various additional coverage endorsements that may be added to it. (Frequently, this is called a "3-D" policy.)

### Commercial General Liability Policy

A policy of liability insurance providing broad coverage for claims made against an individual or company for bodily injury or damage to property of others for which the owner or operator may become liable and which arise out of the business operation or activities.

### Directors' and Officers' Liability Insurance

Protection for officers and directors of a corporation against damages resulting from negligent or wrongful acts in the course of their duties. This insurance also covers the corporation for expenses incurred in defending lawsuits arising from alleged wrongful acts of officers or directors.

### Due Diligence

The obligation of directors and officers to perform their duties in good faith and in the best interest of the business.

### Legal Liability

Liability imposed by law on individuals or corporations to pay for harm done to others. Legal liability may also be assumed under the terms of a contract.

### Liability Insurance

Insurance that indemnifies the insured for sums he may be required by law to pay to third parties as damages for bodily injury or damage to property.

### Named Peril Policy

A property policy in which the perils insured against are specified or listed, as opposed to one that insures against "all risks."

### Occurrence

An incident or event. Liability policies are usually written on an occurrence basis, in which case the policy in force at the time of the occurrence will respond.

### Peril

The event that caused a loss covered by the policy, e.g., fire, windstorm.

### Physical Hazard

The exposure to loss arising out of the physical features of the risk, such as location, construction, heating, protection, etc.

### Policy

Legally binding contract of insurance, including all clauses, riders, endorsements and renewals.

### Policy Limit

The maximum that the insurance company is obligated to pay. Legal costs may or may not be included in the policy limit. Policy limits may apply on each occurrence or as an annual aggregate limit.

### Policy Period

Duration of a policy, most often one year in property or casualty insurance.

### Professional Liability Insurance

Protects professionals against liability for damages and the cost of defending claims based upon alleged professional errors, omissions or mistakes. Purchased by architects, engineers, doctors, lawyers, etc.

### Property Insurance

Covers an insured client's property against damage, destruction or loss by a covered peril.

**Real Property**

Land, equipment, stock and buildings.

**Rent Insurance**

A form of loss-of-use insurance, protecting against loss of rental income. It is particularly valuable where a landlord may depend upon a rental income from his various premises to pay the mortgages.

**Rental Value Insurance**

Insurance that reimburses the owner or occupant of a building for the cost of renting other premises if her building is rendered unusable by some peril insured against.

**Risk**

The chance of loss, specifically the possible loss or destruction of property or the possible incurring of a legal liability. An insurance contract usually addresses risk.

**Sub-limit**

A limit of coverage found in a policy that is less than the overall limit of the entire policy.

**Surety Bond**

A guarantee that the principal will compensate another party for losses sustained as a result of the failure to perform the contract.

**Tenant's Policy**

A package policy specially designed to meet the normal insurance requirements of a private tenant covering personal belongings and liabilities.

**Umbrella Policy**

A special form of liability policy designed to broaden the normal coverages found in the commercial general liability policy and to provide excess insurance limits over and above those available in the commercial general liability policy and other liability policies.

**Utmost Good Faith**

A legal principle that imposes the highest standard of integrity on both the insured and the insurer when entering into an insurance contract.

