

# CONTRACTING THE USE OF THE FACILITY

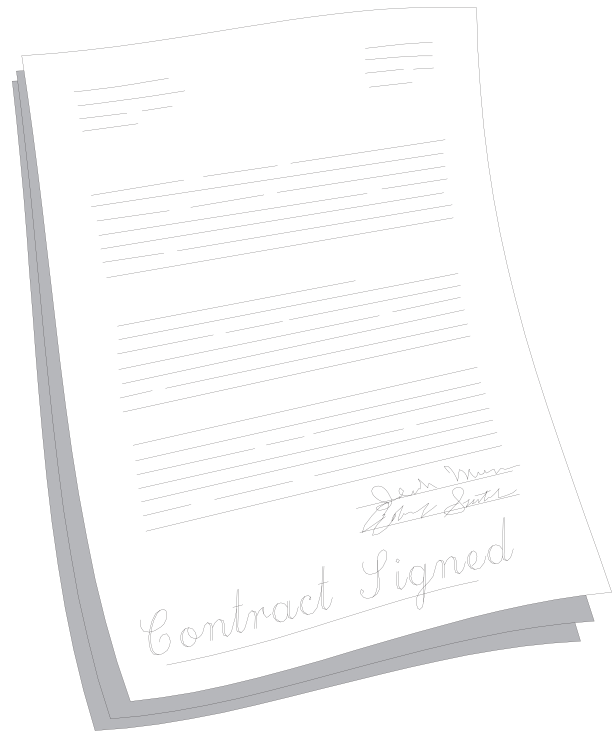
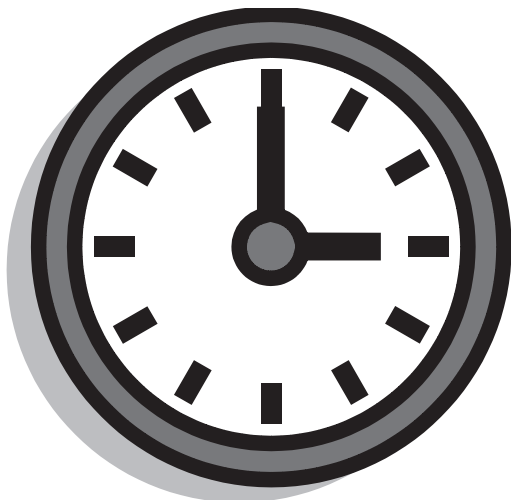
K & K Insurance as submitted by Patrick J. O'Connor, Executive Vice President, City Securities Corporation, for USA Gymnastics

**H**ow many club owners, coaches or booster club parents have rented a large facility to host a gymnastics or cheer competition?

Perhaps the greatest challenge to club owners, coaches or booster club parents is contracting the use of a facility so that the only issue is the outcome of the competition not a lawsuit. Resolution of this mutual concern is best resolved by a formal agreement that honors the intentions of contractual reciprocity, i.g., "I'll take care of my responsibilities if you take care of yours."

The best plan of action is to have your attorney review the contract prior to signing and renting the venue. Acknowledging that any given facility can present differing circumstances of ownership and use by other lessees/contractors, the intended reciprocity is best accomplished by a contract that addresses at least the following considerations.

1. Acknowledging the presence of a formal event schedule as the basis for a contractual agreement, the times (not merely dates) of which the agreement will be in effect needs contractual understanding, whether expressed in clock hours or by function (e.g., upon arrival and departure). It is then important to make any cause for cancellation a known possibility with a known understanding of expectation and consequence.



2. Contractual agreements should start with and clearly indicate the respective duties of each party and the areas of their operation, e.g., premises maintenance (before, during, and after use), concurrent usages if any of other lessees, spectator services (e.g., seating, concessions and parking), disaster control, emergency medical services and security... and then clearly stipulate who will be responsible for the claims arising from those duties and areas.
3. Contract language can then allow each party to release the other from liability for injuries and loss of property arising from incidents that are unrelated to the responsibilities of the other party, i.e., to the effect that

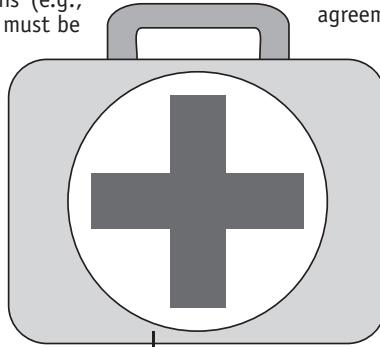
"... (1st party) shall defend, indemnify, and hold (2nd party) harmless for (injuries and loss of property) but only in proportion to and to the extent such ... are caused by or result from the activities and alleged negligence of (1st party) ..."

to be written once on behalf of the facility and then again on behalf of the Team.

4. Each party should then contractually require the other to maintain liability insurance of a stated minimum level, provided by a carrier of a stated minimum quality rating, with participant legal liability coverage included, and be named as an additional insured on that policy for those exposures accepted by contract.

## LOSS CONTROL CONSIDERATIONS

- Following contractual agreement, each party needs to address loss control measures that minimize opportunities for injury associated with this agreement. It is especially important to return to and honor the areas of operation in which the duties accepted by contract apply. For example,
  - Premises maintenance, on one hand, can mean the entire complex or the locker room. On the other hand, it can mean continuous maintenance or a return to its prior state after use. Understandings and loss control attentions (e.g., walk-through inspections prior to and after use) must be true to the agreement of intentions. It would be most prudent, for example, to make automatic a loss control walk-through of the locker room and adjoining ramp to the field before use to note (and address) atypical conditions as well as after use.
  - On site duties for emergency medical services must distinguish that for stricken players from that for stricken patrons (and the exception for major catastrophes). However, the presence of ambulances and their release for a hospital run must be coordinated in a mutually understood manner for management of both parties' needs.



## MANY SPORTS AND ENTERTAINMENT ORGANIZATIONS MUST RENT OR LEASE THE FACILITIES NEEDED FOR THE CONDUCT OF THEIR PROGRAMS.

- Contractual understanding of responsibility for disaster control, including the procedures for receiving and responding to bomb threats and adverse weather advisories, must be followed by mutual understanding of, and compliance with, those procedures.
- "Security" covers "whatever." However responsibility is determined, advance planning and training for those ideal judgments for handling the various problems within "crowd control" is not the only goal. Facility management has the opportunity to loss control various problems by policy and practice, e.g., how alcohol sales are to be made, including their termination at a given time of the game. The equivalent opportunity for Team management to loss control player behavior while on premises is less obvious but should at least be examined.
- The preference and ability of the Team or Facility to transfer selected operations (e.g., security, concessions, transportation) to other parties is not affected unless explicitly understood to be otherwise by contract language. However, should it be permitted, the agreed respective duties of Team



and Facility do not change. Consequently, the sub-contracting to others for such should honor the above principles to ensure mutual understanding of responsibility between these parties as well.

## LEASING PREMISES

Many sports and entertainment organizations must rent or lease the facilities needed for the conduct of their programs. Many community-interest enterprises obtain and maintain facilities for this purpose. This marriage of common interests works advantageously for both most of the time, but only if their contractual agreement balances appropriately their respective responsibilities and liability for whatever may go wrong during the period of their relationship.

To do so, it is necessary to clarify the responsibilities each is to assume and then understand the functions of Certificate of Insurance, indemnification and hold harmless sections within a contractual leasing/renting agreement. All three should be reciprocal, i.e., "I'll do this for you if you do this for me."

A Certificate of Insurance documents to one party that the other has adequate liability insurance should a suit be filed. Typically, "adequate" is at least \$1 million, and the other party is to be named as additional insured, which means Party A's insurance will cover Party B as well as A if sued. This being reciprocal brings the resources of both insurance policies into play if either is sued...unless:

- It also is customary for Party A to ask Party B to indemnify and hold harmless Party A from any an all liability arising out of injuries to others and their property during the relationship. Essentially, to "hold harmless" is for Party B to agree not to bring Party A into a suit against Party B. To "indemnify" is for Party B to agree to pay the costs to Party A if Party A is brought into a suit by a third party. At stake: For what is one indemnifying and holding the other harmless?
- Unfortunately for Party B, they may sign such an agreement that is not reciprocal (i.e., the basketball program that leases the stadium may find itself paying for the injuries to spectators if the roof fell in...or the gymnasium may find itself paying for the catastrophic injury to one athlete who collided with another).
- Balanced reciprocity therefore simply provides for Party A to indemnify and hold harmless Party B for problems caused by Party A, and for Party B to do likewise for Party A for problems caused by Party B, based on agreed upon responsibilities. Those who are asked to sign a contractual relationship for their organization should ask their counsel to be sure that such reciprocity exists.



USA Gymnastics rented Consecro Fieldhouse in Indianapolis, Ind., for the 2005 Visa Championships.