Convention Industry Council

Advancing the meetings, conventions and expositions industry

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UNDERSTANDING THE IMPACT OF LIABILITY LAW*

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Introduction

As meeting and conventions have grown in size and importance, so too have their potential legal problems. Meetings, conventions and trade shows in the twenty-first century will involve much more than booking space and selecting menus. For better of for worse, a web of legal complexities affect even the most routine planning activities. Meeting planners and exposition managers must familiarize themselves with certain legal concept derived from both the law of contract and the law of torts, if for no other purpose than to allow themselves to exercise sound discretion in determining when it is appropriate to consult legal counsel.

Failure to focus on the unique aspects of each meeting or convention may result in litigation if the relationship between the parties sours and a dispute arises. Agreeing to "boilerplate" language in a form agreement could result in bankruptcy for the event sponsor if liabilities are not fairly divided or, even worse, not considered.

This brief primer was created to alert association executives and meeting professionals to the legal implications that arise in various events. Not all areas of liability can be dealt with in a single handout. Rather, three areas – contract liability, negligence or tort ability, and antitrust liability – are discussed. The purpose is not to serve as a substitute for independent legal advice tailored to the unique aspects of a meeting or convention. Rather, the general legal guidelines set forth here, combined with good judgment, should be useful in determining when a problem may exist and legal counsel needs to be consulted.

I. CONTRACT LIABILITY.

A. Introduction

An essential part of your job is to familiarize yourself with certain legal concepts regarding contract law. Meetings, conventions and exhibitions require many types of contracts. These agreements can include exhibit hall licenses and leases, hotel contracts, insurance policies, meeting management contracts, exhibitor contracts, supplier contracts, speaker agreements and employment agreements, to name a few.

These agreements define the rights and duties of the parties involved, the time and type of performance expected, the terms of payment, and the allocation of liabilities and responsibilities to each party in the event of a dispute. It should be understood that a contract essentially allocates risk among parties. Each party strives to protect his or her interests in the negotiation process. It must be remembered, however, that the contract is trying to create a business

relationship in which each party needs to other party to cooperate. As a result, the contract should be negotiated fairly and in good faith.

This section presents general guidelines for handling meeting contracts. Each organization has its own requirements, and you should always seek legal advice before signing any agreement that could result in a liability against you and your organization. Understanding the legal issues and contract terminology will enable you to exercise sound judgment before signing legally binding documents. [1]

B. The Basics of a Contract

A contract is an agreement between two or more parties that creates obligations for the parties. For example, a catering contract obligates one party to provide food and beverage services and other party to pay for those services.

Creating a Contract

To create a valid contract there must be three basic elements:

1. An offer — It must contain the basic terms of the agreement.
2. An acceptance – The offer must be accepted without change, or it becomes a counter offer, which in turn must be accepted as submitted.
3. Legal consideration – The agreement must define benefits to each party (e.g., the facility provides meeting rooms, and the event sponsor pays for the space).

An offer must contain the basic terms of the agreement but does not have to contain all of the details. An offer can be accepted by the other party at anytime until it is terminated or withdrawn.

It is therefore essential that when an offer has been made that there be a specific date when acceptance must be received by the party who made the offer or the offer expires. Failure to do so could result in a party thinking the facility or event planner is not accepting its proposal as a result of a lapse of time, enter into another agreement only to find that it now has a binding obligation with two facilities or for two events for the same dates. Unless one party has paid the other party to have an offer left open for a set period of time, an offer can be withdrawn at any time, even if it has a set time period for acceptance. This is because there is no binding contract to keep the offer open.

Oral and Informal Contracts

A contract, however, does not have to be a formal written document. In some circumstances, an oral agreement can exist that obligates the parties as binding as a written contract.[2] Reservations slips from a hotel can create a contract.[3] Merely an exchange of letters specifying the number of

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[1] An excellent source of the basic terms of the contract, along with the definitions and explanation of those terms, can be found in the CIC APEX Contract Panel's "Housing Facility and Convention Center Contracts" Report.

rooms, price, and period of use may be constructed as creating a binding contract.[4] Similarly, countersigning a proposal can in certain circumstances create a binding contract. As a result, it is important that if a request for information or a proposal is not meant to be an offer it specifically so states. Frequently, a hotel or exhibit hall will create a written proposal and request that the show sponsor sign the proposal. Courts have found that such documents are offers and the other party signing it creates a binding contract. [5]

These oral or informal agreements are frequently interpreted as binding contracts even if a number of the terms are not set forth in the proposal. Courts will not void the contract despite the missing terms, but rather will fill in those aspects of the contract which have not yet been agreed to. These aspects can include terms as important as room rates, food and beverage functions, etc.[6]

It is recommended that all contracts be in writing. A written contract enables the parties to confirm the numerous details of the relationship that go beyond rates and dates. An agreement should be reached on as many items as possible during the initial contract negotiations. Well-drafted and complete contracts avoid later uncertainty and acrimony.[7] Failure to focus on the unique aspects of your meeting may result in problems, even litigation, if the relationship between the parties sours and a dispute arises. Careful attention to hammering out specific details in a written agreement will protect the interests of your organization.[8]

As a result, two important questions need to be asked when signing a contract: Are the terms of the contract set out with specificity (e.g., rental rates, services provided, duration, etc.); and does the contract encompass all agreements between the parties?

Contracting Parties

To be binding, a contract must also be entered into by an individual of legal age who is the actual or apparent authority to bind the party on whose behalf he or she has signed the agreement. Unless otherwise specified, the sponsor of the show and its officers are likely to be considered the contracting party and liable for any damages if the contract is breached.[9] As a result, if the

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(continued)

2 *Cardinal Consulting Company v. Circo Resorts, Inc.,* 297 N.W.2d 260 (Minn. 1983).

3 *Wells v. Holiday Inns, Inc.*, 522 F. Supp. 1023 (W.D. Mo. 1981).

4 *King of Prussia Enterprise, Inc. v. Greyhound Lines, Inc*., 457 F. Supp. 56 (E.D. Pa. 1978).

5 *Hotel Del Coronado Corp. v. Foodservice Equipment Distributors Assoc.*, 783 F.2d 1323, 1325 (9th Cir. 1986)(signed letter agreement was a contract and court filled-in undefined terms including room rate).

6 *Id.*

7 C.f. *American Hardware Manufacturers Assoc. v. Reed Elsevier Inc., et al.*, Case No. 03 C 9421, Slip Copy, 2007 WL 495305 (N.D.Ill. Feb. 13, 2007).

8 *Parker Chiropractic Research Foundation v. Fairmont Dallas Hotel Co.*, 500 S.W.2d 196 (Tex. App. 1973).

9 *King of Prussia Enterprises, Inc. V. Greyhound Lines, Inc.* 457 F. Supp. 56 (E.D. Pa.), *aff'd*, 595 F.2d 1212 (3d Cir. 1978).

contacting party is not to be the sponsor of the show, the contract needs to clearly identify who is the contacting party.

C. Should You Use Your Own Contract?

There are certain advantages to creating and using you own contracts. A contract drafted for your organization can set the terms and conditions that reflect what it wants out of the negotiations. Such a contract also allows the organization to include provisions that may later become significant. Moreover, once the organization has a properly drafted agreement, it can continually use that contract in the same subject areas indefinitely. Generally, in most subject areas, contracts do not become obsolete. For example, a good employment agreement can be used for different employees. Similarly, a good trade show management contract can be used annually for shows in different locations.

There are also certain disadvantages. Creating your own contracts can be time consuming and expensive with hiring attorneys to draft the agreements. Moreover, hotels and exhibit halls often insist on using their own contracts.

If you do not crease your own contracts, consider developing a checklist for each type of contract that the organization needs. A checklist that includes all the items that are important to the event sponsor can be used to ensure that key items are included in or appended to a contract. The event sponsor will need to make periodic updates to its contract checklists.

D. Contract Terms and Conditions

Contracts contain terms and conditions that are intended to protect the interests of both parties. You should be familiar with the various types of provisions that are typically included to ensure that your contract covers all the bases. Provided below is a checklist of items that should be considered before signing a contract.[10]

Preamble/Option Status

A preamble is an introductory statement at the beginning of the document that identifies the parties by names and addresses. The Preamble often affirmatively states the intent of the parties to enter into a contract. This section often includes basic background or recital information such as the "Whereas" clauses.

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[10] The CIC Manual provides a sample space contract for conventions and exhibitions appears in the Appendix. It is a sample only, and you should be sure your contract reflects the terms to which the parties agreed. In addition, the CIC APEX Contract Panel has prepared a report on "Housing Facility and Convention Center Contracts." That report provides definition and an excellent discussion of the various terms regarding facility contracts. Both items provide excellent starting points for creating contract checklists.

Event Details

The contract should identify basic facts about the event. It should identify the name of the event, the type of meeting or event being held, the move-in/move-out dates, and any early arrival or late departure requirements.

Definition of Terms and Obligations

The contract needs to specify each party's obligations. For example, a hotel contract should specify the numbers and types of guestrooms being reserved, the rates, the confirmation detail, the complimentary room policy, special room requirements and rates for VIPs, staff and suppliers, the cut-off dates for reservations, guarantee and deposit requirements, the check-in and check-out times, specific room rates for the group, room taxes and other charges and an early departure fees. The contract also needs to identify the event sponsor's obligations, including whether the sponsor is assuming any liability for unused room in the room block.[11]

Billing Arrangements

The billing and payment terms need to be specified. These shall include the method of payment, time of payment, any deposit requirements, format of bills, review opportunities, and procedures for handling and resolving disputed charges, the names of people authorized to sign the master account and any discounts for early payment of the master account. The contract should also specify the rights of the event sponsor to audit the billing.

Termination

Termination clauses are provisions that excuse nonperformance of the contract without liability. For example, Force Majeure or "Acts of God" clauses protect the parties in the event that a contract cannot be performed due to causes that are outside the control of the parties and cannot be avoided[12]. The contract should specify who can terminate the contract, under what circumstances the contract can be terminated without liability, the requirements for notice of termination and any costs involved for termination.

Cancellation and Attrition

Cancellation and Attrition are different events. Cancellation is when one party cancels a contract and does not perform any of its obligations of the contract. Attrition, on the other hand, is where the contract is performed but one party does not fulfill all of its obligations. This generally involves a facility contract and a failure to fill a room block as specified in the contract or where food and beverage functions fall below those specified in the contract.

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[11] *Hyatt Corp. Women's Int'l Bowling Congress*, 80 F. Supp 2d 88 (W.D.N.Y. 1999).

[12] *Facto v. Pantagis*, 915 A.2d 59 (N.J. Ct. App. 2007)(force majeure relieved banquet hall of contractual obligations under force majure clause and as result of electrical outage and plaintiff-bride also not obligated to pay for contract price do to same impossibility).

1. *Cancellation*. Generally, a cancellation clause outlines the damages to be paid to the non-cancelling party if a cancellation occurs.[13] This can include a liquidated damage clause that stipulates the amount of damages if the contract is cancelled. Whether or not a contract should contain a stipulated damage issue is a question for negotiation. The absence of a liquidated damage provision does not, however, mean that either party can cancel without liability.

Many contracts fail to address when the facility cancels, moves the event from the rooms identified or otherwise breaches its obligations. The event sponsor can negotiate to have a liquidated damage clause for such cancellation. The contract should also identify what takes place if a guest is relocated, often referred to as walking the guest, as a result of overbooking the facility.

2. *Attrition*. Many contracts have attrition clauses. The attrition clause identifies the obligation of the event sponsored to meet minimum attendance or revenue commitments for sleeping rooms or food and beverage functions. An attrition clause is not required in order to have a binding contract. If there is no attrition clause, the damage will be determined by the terms of the contract.[14]

One court has determined that, in the absence of the attrition clause, the event sponsor is not guaranteeing a minimum number of attendees.[15] The court held, that absent an attrition clause, the association was only required to use reasonable and good faith efforts to hold event at location and to fill hotel reservations. The event sponsor was not liable when the event attendance fell well below the room block.

The financial affects of cancellation and attrition clauses are so significant that legal advice should be sought before committing to such clauses.

Indemnification

Arguably, the most controversial and least understood area in contracts is the indemnification clause. A contract needs to specify who is liable for any injuries that may occur under the contract and state any the limit on the amount of liability.

An indemnification clause identifies that one party agrees to protect another party from liability as a result of a lawsuit by a third party. The party providing the protection (the indemnifying party), is usually the party whose actions cause the liability to arise.

In reviewing indemnification clauses, it is important to identify what type of liability is being covered. Some indemnification clauses cover only gross negligence and willful acts. The vast majority of liability, however, results from simple negligence and such actions would not be covered by these indemnification clauses. In addition, the indemnification clause should do more than just "indemnify" the non-negligent party. To cover litigation costs and damages, the clause should provide that the liable party agrees to "hold harmless, indemnify and defend" the other party.

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13 *National Ass'n of Postmasters of U.S. v. Hyatt Regency Washington D.C.*, 894 A.2d 471 (D.D.C. 2006).

14 *Lederman Enterprises, Inc. v. Allied Social Science Ass'n*, 709 P.2d 1 (Colo.App. 1985).

15 *Hyatt Corp. Women's Int'l Bowling Congress*, 80 F. Supp 2d 88 (W.D.N.Y. 1999).

Insurance

The contract should address whether the parties have appropriate insurance. These may include, but are not limited to, commercial general liability (CGL), worker's compensation, event cancellation, business interpretation, liquor liability policies. Consideration should be given to whether the contract should specify the minimum amount of insurance to be secured and whether each party will name the other party as an additional secured on existing policies. The contract should also determine whether certificates of insurance should be exchanged to verify that the party has in fact obtained the required insurance to protect the other party. Given the complexities of insurance, the party should consult with their legal counsel or insurance brokers regarding the policies to ensure they have appropriate full coverage.

Dispute Resolution and Governing Law

When disputes arise regarding a contract, the first step is to look at the contract language itself. Not only will the contract terms determine the rights and remedies of the parties, the contract may also provide where and how the dispute is to be resolved. Contract breaches and litigation can often be prevented by providing both parties reasonable time to resolve defaults. The parties can agree to provide reasonable notice and time to cure or remedy contract default with the exception of situations involving personal safety and damage to the facilities.

A contract can specify alternative ways of resolving disputes, rather than going through the process of filing a complaint and pursuing the claim in a state or federal court. There are many alternative dispute resolution programs available, including arbitration, mediation and private use of retired judges. These programs provide both binding and non-binding expeditious resolutions of issues. [16]

It is equally important to consider where a dispute will be resolved designating not only the state, but also the county or city. A contract should also specify what state laws will apply in interpreting the contract.

Miscellaneous

The miscellaneous provisions identify any specific and unique aspects of a contract. Any special parking, transportation, promotional or similar need should be specified.

An event can often call into play various state privacy laws and regulations. The contract needs to address these issues by ensuring data on attendees are kept confidential and that the facility will comply with all applicable privacy obligations.

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[16] The American Bar Association's Alternative Dispute Resolution (ADR) Section maintains a listing of available programs in its web site (www.abanet.org/dispute/drlinks.html). The ADR Section also publishes titles such as "Resolving Disputes in the Global Marketplace," "State and Local Bar ADR Survey," "ADR Primer," "Arbitration Seminar," "Mediation Seminar," "Making Mediation Work for You," and "Mediation: Practical and Ethical Challenges." These publications are available from the American Bar Association (www.abanet.org) for a nominal fee.

Any contract with a facility should also set forth the obligations under the Americans with Disabilities Act. The Act applies only to meetings conducted within the United States. The facility is generally responsible for public areas, sleeping rooms, restrooms, etc. and the event sponsor is responsible for function room layouts and accommodating special needs (*e.g.*, sign language interpreter, large print). The specific responsibilities should be addressed and properly allocated in the contract.

Notices

The contract should specifically state how notice is to be delivered and to whom notice is to be delivered.

Assignments

The contract needs to address whether another person can assume the responsibility under the contract. This is particularly important in situations where a hotel, conference center or the event itself are sold to a new owner.

Attachments

Contracts often include attachments. It is important that these attachments be identified as being incorporated and made part of the contract.[17] For example, the rules and regulations of the facility are commonly included. These should be attached to the contract and, again, incorporated and made part of the contract.

E. Default and Breach of Contract

If either party fails to carry out its obligations in part or in full, the contract is breached. Both parties should be entitled to reimbursement of all reasonable expenses and lost profits substantiated if the contract is breached.

Damages

Normally, the damages that are awarded are the lost profits as a result of the cancellation. A party seeking actual damage to a breach of contract must use reasonable efforts to mitigate the damages, that is, the party must take reasonable steps to reduce the damage, injury or cost resulting from the breach.[18] Nonetheless, the full value of the contract may be awarded. For example, in one case, the court allowed the hotel to recover from the travel agency that arranged for the rooms full value of the room rental ($58,000 for 200 rooms), without deduction for any

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[17] *American Hardware Manufacturers Assoc. v. Reed Elsevier Inc., et al.*, Case No. 03 C 9421, Slip Copy, 2007 WL 495305 (N.D.Ill. Feb. 13, 2007)(to incorporate attachments the signed contract must refer expressly to the attachments, or the attachments must be connected, physically or otherwise, to show that they relate to the same contract).

[18] *Alpert v. Kirsch*, 799 N.Y.S.2d 158 (N.Y. Misc. 2004)(caterer failed to show that it took reasonable steps or its best efforts to re-book the cancelled event and mitigate its damages such that it was entitled to keep the entire deposit made on the cancelled event).

rooms the hotel may have rented after cancellation.[19] Unless specified in the contract, mitigation generally does not apply to a contract that includes a liquidating damage clause. Rather the liquidated damages set forth in the contract will be awarded.[20]

Notice.

In determining whether to award damages, a court will consider how far in advance of the meeting the contract has been cancelled. If substantial advance notice of cancellation is given, a court is less likely toward significant damages.[21] The amount of time considered adequate will depend upon the contract. For example, if only 50 sleeping rooms and one mid-sized meeting room are reserved, a six-month notice maybe sufficient, but a year's prior notice may not be enough where 1000 rooms and all meeting space were reserved for one week.[22]

Who is Liable?

The contracting party is generally liable for any breach of contract. It is therefore important to clearly identify the contacting party in the contract. For example, a contract signed by a third party meeting planner or exposition manager must state whether the contact is being signed on behalf of the event sponsor. Absent such clarification, the event sponsor will be assumed to be liable, but the planner or manager who signed the contract may also be held liable for any breach.[23]

Minimize Risking

If the event sponsor determines to cancel a contract, settlement should be pursued. Hotels and exhibit halls are often amenable to settlements. The following are examples of ways of settling the matter without incurring substantial financial liability:

1. If the hotel is part of a chain, the event sponsor can agree to hold a future convention in the same chain of hotels but at another location;
2. The sponsor can offer to hold other meetings, such as a number of smaller seminars or executive meetings, at the hotel or hall within a set period of time;
3. The sponsor can agree to hold the event at the hotel or hall in a future year; and
4. If the event has out grown the hotel or exhibit hall, the event sponsor can agree to hold a reception at the hotel, or use the hotel for all spillover traffic.

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19 *King of Prussia Enterprises, Inc. v. Greyhound Lines, Inc.*, 457 F. Supp. 56 (E.D. Pa.), *aff'd*, 595 F.2d 1212 (3d Cir. 1978).

20 *National Ass'n of Postmasters of U.S. v. Hyatt Regency Washington D.C.*, 894 A.2d 471 (D.D.C. 2006).

21 *Alpert v. Kirsch*, 799 N.Y.S.2d 158 (N.Y. Misc. 2004).

22 *National Ass'n of Postmasters of U.S. v. Hyatt Regency Washington D.C.*, 894 A.2d 471 (D.D.C. 2006).

23 *King of Prussia Enterprises, Inc. V. Greyhound Lines*, Inc. 457 F. Supp. 56 (E.D. Pa.), *aff'd*, 595 F.2d 1212 (3d Cir. 1978).

If offers of settlement are not successful, you should create a checklist of the problem. Contact groups which have contracted with the same party within the prior twelve months to ascertain any problems they may have had. (It is often useful to have as part of the contract a requirement that the other party provide a list of its other contracts.) Also provide the other party with a detailed list of the problems which require cancellation if it cannot guarantee that the problems will be corrected.

Continuing Communications and Documents

One of the best ways to avoid problems is for parties to communicate regularly once the contract is signed. Inasmuch as contracts are often signed years in advance of the event, regular communications are essential. Such regular communications will alert the parties to any potential problems such as a change in the scope of the event, changes in the facilities, and other common issues that arise. It is often advisable to verify these communications in writing. Verifying the discussions, and the agreements reached during the discussions, provides the parties with a clear understanding of the agreements reached and minimizes miscommunications.

Similarly, all information and correspondence relating to the contract negotiations, execution, and subsequent communications should be retained at least until the satisfactory conclusion of the contract. Upon completion of the event, the information should be discarded only in accordance with appropriate government regulations and the organization's document retention policies.[24]

All events involve contracts, whether written or oral. It is essential that the event planner understand the basic concepts of contacts to minimize future liability.

II. LIABILITY FOR NEGLIGENCE.

A. Introduction.

An event sponsor and its meeting planner are not only responsible for booking space and choosing menus, but also for ensuring, to the extent possible, the safety and well being of the participants once they get to the meeting, and, in some cases, before they arrive. An association sponsoring a meeting or trade show and the meeting planner may be liable for injuries to its invitees under three basic concepts.

Negligent Act of the Event Sponsor's Employees

An event sponsor will be liable for the acts of its employees and agents if those acts are negligent. As a result, the event sponsor would be liable for both its in-house employees and also those employees hired specially for the show, such as an exposition manager. If, for example, an exposition manager insists upon a certain method for covering the wiring in a show, which is below the standards common in the industry, the event sponsor will be liable if someone

[24] The information provided addresses only contracts for events in the United States. Other countries may have different requirements and legal precedents. CIC's International Manual provides an excellent review of the unique requirements for international events.

is injured as a result of the inadequate coverings. As explained above, the event sponsor needs to protect itself by covering such liability in the indemnity and insurance clauses of its contracts.

Negligence of Suppliers

In addition to its employees and agents, an event sponsor may be found liable in certain circumstances for the negligence of the people with whom they contract. For example, if the trade show decorator damages a facility through negligence, the trade show, as the sponsor, may be liable. Similarly, the event sponsor may be liable for the negligent or improper conduct of the security it hires. Once again, the event sponsor needs to protect itself by covering such liability in the indemnity and insurance clauses of its contracts.

Professional Liability

Event planners and sponsors can also be liable for failing to take adequate precautions in ensuring that the service contractors they hire and the sites they select are appropriate. For example, an event planner who selects a meeting at a facility in a high crime neighborhood could subject both him or herself and the event sponsor to liability for any injuries suffered by an attendee as a result of a criminal act in the neighborhood. Similarly, an event planner or manager who hires a limousine company without first checking out its safety record could be held liable if attendees are injured in an accident while riding in the limousine. The event sponsor who hired the meeting planner could also be liable. Obtaining the proper insurance is the key to protect the event planner and event sponsor under these circumstances.

B. Negligence Defined.

Negligence is defined simply as conduct which is below the normal standard expected in the circumstances.[25] The standard will change according to the individuals involved. For example, the standard for exhibition managers will be judged by the common customs and knowledge of other exposition managers, and not the average person on the street. If an individual holds himself out to have expertise, he will be judged by a higher standard of meeting planning responsibilities according to his expertise.

C. Limiting Potential Liability.

There are a number of ways of limiting liability and exposure to damage. These include:

1. Inspect all facilities and obtain crime statistics regarding the neighborhood;
2. Make a thorough check of your service contractors before contracting with them;
3. Include an identification, defend and hold harmless clause in the contracts with service contractors and the facility;
4. Provide all guests with emergency numbers, including a number to obtain medical assistance;

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[25] *Marriott Corp. v. Lerew, et al.*, Case No. 8555, 2005 WL 2467055 (OH. Ct. App. 2005).

5. Train staff to handle emergencies;

6. Use sensible controls to monitor liquor consumption at show-sponsored events;

7. Conduct a thorough inspection;

8. For all tours or other recreational activities (such as golf, boating expeditions, etc.), registration material should include a wavier to be signed by the participant holding the organization harmless in the event that an accident occurs; and

9. Ensure that you and your suppliers have adequate insurance.

Nothing can prevent a law suit from being filed. Following these rules, however, may minimize the risk of being held liable.

D. Insurance

There are many types of insurance available for meetings, conventions and exhibitions. You should discuss your specific needs with an attorney or a qualified and experienced industry insurance agent. This overview will familiarize you with some of the basic types of insurance coverage that is available to limit liability and protect against losses.[26]

General Liability

General liability insurance is a must. It provides protection against claims involving bodily injury and property damage. Consider a high limit — not less than $5 million (it does not cost much more than $1 million and it is worth it). General liability insurance, however, may not provide protection for all of your obligations. For example, property in your care, custody or control is usually excluded under general liability coverage.

Umbrella Policies

For certain types of coverage it will make sense to consider umbrella coverage. This is a catch-all type policy. It is often relatively inexpensive and provides additional policy limits and, thus, extra protection.

Fire Liability

Under the terms of your facility contract, you may be held responsible for fire damage to the building caused by your negligence. "Fire legal liability" insurance is available to protect you.

Medical Liability

"Medical payment insurance" provides reimbursement of medical expenses for injuries that occur at the site (excluding employees and sometimes volunteers) regardless of your legal

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[26] The CIC APEX Contract Panel has prepared a report on "Housing Facility and Convention Center Contracts." That report provides definition and an excellent discussion of the various terms the various types of insurance available.

liability. If you maintain a first-aid station, "incidental medical malpractice" insurance protects you and the nurses or paramedics staffing the station against claims for failure to render proper or adequate medical assistance.

Host and Liquor Liability

If you operate a food concession or serve food and drink at a reception or dinner, "products liability" insurance can protect your group against claims such as food poisoning. "Host liability" or "liquor liability" (depending on state law) insurance protects your organization against claims resulting from serving alcoholic beverages. For example, if a guest becomes intoxicated and has an auto accident on the way home, your organization could be sued for serving the alcohol. Such insurance may be required in certain states if your organization hosts an event at which liquor is served.

Additional Insured

If you rent or charter buses, automobiles, watercraft or aircraft, you have a substantial liability exposure for injury to persons and damage to property. When you negotiate your contract, ask to have your organization named as an "additional insured" on the lessor's auto insurance policy for liability, property damage and medical payments; and have the contract stipulate that the organization shall not be held liable for damage to the actual vehicle itself. If the lessor's insurance company will not include the organization as an additional insured, obtain that insurance yourself.

Make sure you are named as a co-insured on any vendor's policy, above and beyond any coverage you may have. Also, require the insurance company to give you notice of any non-renewal or cancellation of the policy or rider.

Worker's Compensation

Your organization's worker's compensation policy probably covers employees who work at the meeting. If you put temporary staff on your payroll on site, keep a record of their salaries and the jobs they perform. The insurance company will ask for this information during the audit at the end of the policy term. You can also buy "accidental death and dismemberment" insurance, as well as "accidental medical payment" insurance for volunteers.

Travel and Accidents

Delegates and guests should be made aware that your organization is not responsible for their personal property. You can, however, offer for purchase "travel accidental death and dismemberment" insurance for the term of the meeting, including travel to and from.

Cancellation

Cancellation insurance protects you against loss of revenue if the event is interrupted or cannot be held due to fire, weather, a strike, or other insured hazard. The insurance can also pay for the extra expenses incurred because of adverse circumstances. For example, a taxi strike may require

you to hire buses to pick people up at airports. Insurance is available that would reimburse you for this added expense.

Insurance can provide substantial protection against liability. It is important to understand what coverage you have, what coverage you need and what you must do in the event that a claim arises. Often, failure to notify properly and timely the insurance company can risk voiding coverage. Finally, be sure that all matters are in compliance with local and state laws where the event is conducted. Legal counsel and/or an insurance professional should always be consulted.

III. ANTITRUST LIABILITY.

A. Introduction.

The very success of an event increases antitrust risks. As more customers flock to an event, its economic influence increases. It becomes essential for competitors to attend the event or exhibit in the show, other competing events may suffer a loss of exhibitors or attendance, and third party vendors find the event an attractive forum to market goods. Access to events has become a frequently litigated issue under the antitrust laws. As a result, conduct that once appeared benign is now subject to close scrutiny and may be considered illegal.

B. Antitrust Overview.

The general object of the antitrust laws is to promote competition in open markets, a primary feature of our private enterprise system.[27] The antitrust laws condemn concerted actions such as conspiracies, contracts and agreements that unreasonably restrain trade.[28]

Concerted actions can be shown by an express agreement[29], but a formal contract is not necessary.[30] The agreement can be inferred from the parties' actions. A "knowing wink" can be enough if the results are the parties work in concert to restrain trade. Trade associations consist of competitors. Action by such trade associations, a common event sponsor, will often be considered concerted actions by its members—satisfying the concerted action requirement.[31]

However, not all collective actions or agreements violate the antitrust laws[32]. Only those that *unreasonably* restrain trade, such as agreements that eliminate price competition or that allow

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27 55 Report of the Attorney General's National Committee to Study the Antitrust Laws 1.

28 To violate the federal antitrust law the action must also affect interstate or foreign commerce. Most events have some impact on interstate or foreign commerce, attracting attendees from more than one state, using vendors that come from out of state, advertising in other states and similar action. *See Hospital Building Co. v. Trustees of Rex* Hospital, 425 U.S. 738 (1976); *United State v. Brown University*, 5 F.3d 658 (3d Cir. 1993).

29 *United States v*. Andreas, 216 F.3d 645 (7th Cir.), *cert. denied*, 531 U.S. 1014 (2000).

30 *United States v. General Motors Corp*., 384 U.S. 127 (1966).

31 *Alvord-Polk, Inc. v .F. Schumacher & Co.*, 37 F.3d 996 (1994), *cert. denied*, 514 U.S. 1063 (1995).

32 *Esco Corp. v. United States*, 340 F.2d 246 (2d Cir.) *cert. denied*, 484 U.S. 977 (1980).

event sponsors to hold an event in certain non-competing locations. To determine whether an agreement unreasonably restrains trade, the courts traditionally apply one of two basic analyses.

Per Se Illegal

Certain activities are considered to be so pernicious and so rarely justifiable that the courts will condemn them as illegal without any analysis or consideration of justifications. These activities include agreements among competitors to fix prices, to divide up territories or customers, or to boycott a competitor.[33]

Rule of Reason

The majority of antitrust cases are decided under the "rule of reason". Under this analysis, the courts balance the effects that the agreement has on competition to its benefits. For example, if a trade association created a safety standard, the court would look at the need for the standard and the benefit of the need versus the effect it had on competitors who manufacture products that do not all meet the same standards.[34]

C. Enforcement of the Antitrust Laws.

The antirust laws can be enforced by the federal government (Department of Justice and the Federal Trade Commission) and private individuals who may sue and collect three times their actual damages.[35] Furthermore, under certain circumstances, violations of these statutes may constitute criminal activity which could subject the perpetrator to jail terms and substantial monetary fines. Individuals (such as directors) can also be found liable. Most individual states also have antitrust statutes that parallel federal law.[36]

D. The Principal Problems.

There are four typical antitrust problems concerning event such as trade shows and expositions.

1. Exclusion or discrimination against non –members or others in allocating space at an event;
2. Exclusive contracts with attendees or suppliers;
3. Official event contracts; and

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[33] *Denny's Marina, Inc. v. Renfro Productions, Inc.,* 1993-1 Trade Cases (CCH) 70, 402 (S.D. Ind. 1993)(excluding discounter from trade show is per se antitrust violation).

[34] *Cooney v. American Horse Shows Asso.*, 495 F. Supp. 424 (S.D.N.Y. 1980)(trade association may adopt reasonable eligibility criteria, competitors did not agree to exclude plaintiff from the market of trainers at competitions recognized by the AHSA in order to insulate themselves from competition).

[35] *Id.*

[36] *JES Props., Inc. v. United States Equestrian, Inc.*, Case No. 8:02-CV-1585-T-24MAP, 2005 U.S. Dist. LEXIS 43122 (D. Fla. 2005).

4. An agreement not to compete.[37]

Each issue is addressed below.

Allocation of Exhibitor Space

Under certain circumstances, a show may restrict participation or exhibit space rentals as long as the restrictions do not significantly inhibit the ability of the excluded party to compete.

In determining the effect of the exclusion, the courts will consider:

- Whether the refusal was done unilaterally or involved other exhibitors (if an exhibitor was excluded at the instance of other exhibitors there is a strong likelihood that the exclusion will be found to violate the antitrust laws as a conspiracy to inhibit competition.);
- Whether the exclusion was done pursuant to established rules that are fairly applied to all;
- Whether the trade show or exposition is the sole show or one of a few shows existing in the industry;
- Whether the excluded party could participate in other trade shows; and
- Whether participation in other trade shows was considered essential to compete within the market.

To avoid liability:

- Criteria for obtaining exhibitor space should be clearly and neutrally drawn so that all competitors have an equal chance at obtaining exhibitor space (it is permissible to exclude on a first come, first serve basis. It is also permissible to give a prior exhibitor first choice exhibit space);
- If an exhibitor has been refused space, the exhibitor should be provided an opportunity to plead his case;
- If a trade show is sponsored by a trade association, non-members should be granted an opportunity to participate in the show, if possible; and
- If a trade show is sponsored by a trade association, non –members should be granted an opportunity to participate in the show, if possible.

The key to avoid liability is to ensure the criteria for obtaining exhibitor space should be clearly and neutrally drawn so that everyone has an opportunity to participate if space is available.[38]

Exclusive Contracts

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37 *Family Boating Center, Inc. v. Washington Area Marine Dealers Ass'n*, 1982-1 Trade Cases (CCH) 64, 592 (D.D.C. 1982).

38 *Id.*

Courts recognize that event such as trade shows are effective methods of marketing and that access to an event can be of crucial importance to distributors. Potential antitrust problems can arise when an event requires an exhibitor to agree that it will exhibit goods only in its event and in no competing shows. Whether this violates the antitrust laws depends upon whether the effect of the exclusive agreement prohibits competing shows from attracting exhibitors. If a trade show is so important to an exhibitor that it must agree, this may violate the antitrust laws.[39]

Generally, exclusive dealings arrangements will be considered illegal if they have the potential to "substantially lessen competition or tend to create a monopoly." These arrangements, unlike price fixing, boycotts, and other such arrangements are reviewed under a "rule of reason," by which courts will review an arrangement assessing its impact on competition and any justifications for it.

The effects of an exclusive dealing arrangement are assessed by considering:

- The dominance of the trade shows in the relevant market;
- The extent to which competitors are foreclosed from distributing their goods[40]; and
- Whether the show has the power to impose effectively an exclusive requirement. If it does not have the power, then there is not likely to be an antitrust violation.

The basic consideration is how important a show is to competitors and whether it commands so large a market share that exclusion from the show will significantly impact an exhibitor's ability to compete.

Official Show Contractors

As with an exhibitor contracts, problems can arise where an official show contractor is designated to the exclusion of other. The excluded suppliers may object and claim that the exclusion violated the antitrust laws.[41]

As a general rule, a company has the right to refuse to deal with whomever it pleases, as long as it does so unilaterally. A serious risk of violating the antitrust laws arises, however, once the company involves others in its decision to refuse to deal with other contractors. An exclusive supply contact will be assessed by considering:

- How competition is affected (the less restrictive, the more likely it will be considered legitimate); and
- Why the exclusive contract is needed (e.g., because of show security, insurance liability, etc.).

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39 *Full Draw Prods. v. Easton Sports, Inc.*, 182 F.3d 745, 752 (10th Cir. 1999).

40 *Tamps Electric Company v. Nashville Company*, 365 U.S. 320, 329 (1961); *White & White, Inc. v. American Hospital Supply Corp.*, 540 F. Supp. 951, 1028-29 (W.D. Mich. 1982).

41 *MCM Partners v. Andrews-Bartlett & Assocs.*, 62 F.3d 967 (7th Cir. 1995).

To avoid liability:

- The reasons for an exclusive supply contract should be identified; and
- The exclusion should be no more restrictive than necessary. For example, pre-registration of "on-official" contractors is better than complete exclusion.

Covenant Not to Compete.

It is not unusual to include in a long-term trade show management agreement a requirement that the show manager not sponsor or manage an identical or similar show for a limited period of time after the management agreement is terminated.

The courts have generally reviewed these covenants not to compete to determine whether the restrictions are fair. The courts will consider whether the restrictive covenant is necessary to protect the show sponsors and whether the length and scope of the restrictions are reasonable.

To avoid liability:

- Covenants not to compete should cover only a short period of time (not to exceed length of management contract);
- The covenant should not be too broad; and
- The covenant should clearly define a "competing show" (e.g., any show with 20% of the same exhibitors).

E. General Precautions to Take:

The antitrust laws provide many traps for the unwary or uniformed. Accordingly, the most important aspect is to consult legal counsel before undertaking any action involving the exclusion of exhibitors, suppliers, or third party vendors, entering exclusive agreements with a facility or exhibitor, or agreeing with a competing show to consolidate the shows or other aspects of the shows. A few simple rules are important:

1. All show policies should be set out in writing;
2. All exhibitors should be notified of changes in show polices;
3. An exhibitor should be denied space only according to the established policies;
4. Before expelling an exhibitor, a full record of the reason for expulsion should be created;
5. All proposals from or contracts with competing shows should be reported to legal counsel;
6. Fair procedures for dealing with complaints and protests should be established;
7. Access to the trade show or exhibition should not be linked to association membership;
8. All show criteria and policies should be narrowly tailored to meet the event sponsor's needs; and
9. All contracts and show polices should be reviewed by legal counsel.

IV. CONCLUSION

This primer presents general guidelines to assist the event planner and sponsor executive to recognize the legal issues that arise with events. Each organization has its own requirements, and you should always seek legal advice before signing any agreement that could result in a liability against you and your organization. Understanding the legal issues and terminology, as well as the types of insurance coverage available to protect your organization, will enable you to exercise sound judgment.