

LESSONS LEARNED

Another Victory for Contractual Risk Transfer!

The Lawsuit:

An ASCIP member was sued by an adult spectator who was injured during a third-party organization's water polo meet that was occurring at the member's pool.

The Allegations:

The lawsuit alleged that the District was negligent in providing a faulty plastic chair which collapsed while the spectator was seated. This resulted in significant injuries including a partially amputated finger.

The Award:

Despite initial estimates of damages exceeding \$200,000, the case closed with **no indemnity payment** and less than \$1,000 in claim expenses! Because of indemnity and insurance provisions in the user agreement, the suit was successfully tendered to the third-party organization's insurer.

To ensure similar outcomes with incidents during facility use by third-parties, ASCIP recommends the following:

1. Implement a Facilities Use Board Policy which outlines the terms and conditions deemed proper by the governing board for use by the public and organizations, and specific limitations, requirements and restrictions set forth under the Civic Center Act (Ed Code Section 38130 (K-12) and Section 82537 (Community Colleges)).
2. Develop a "Facilities Use" approval and authorization process which includes:
 - The acceptability and availability of the facility for the proposed use
 - Considerations associated with the type of user
 - The costs associated with the proposed use
3. Use of a standard "Facilities Use" agreement which contain the following:
 - An acknowledgement and agreement to take the property "AS IS" with the duty to inspect for, warn of, and correct blatant defects or hazards that present a risk of harm to the Facility User or the group.
 - An express indemnity and hold harmless agreement in favor of the District with a duty to defend that includes the payment of attorney fees and litigation costs.
 - An express assumption of risk provision by the Facility User and the group that they represent.
 - Require insurance with limits that are acceptable to the District. At a minimum, Districts should require general liability insurance in the amount of \$1 million per occurrence. A Certificate of Insurance and an additional insured endorsement naming the District must be provided in advance of the use.
4. Verification that the Facility Use Agreement and all insurance documents are submitted and adhere to District's requirements.

For more information, see ASCIP's **Facilities Use Guidelines**. These are available on our website under the Risk Service section or at <http://ascip.org/risk-services/guidelines-best-practices/>

Contact your ASCIP Risk Services Consultant for more information at (562) 404-8029