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Christian's practice areas consist of appellate advocacy, retail and hospitality liability defense, and state healthcare regulatory issues.

He is admitted to practice in South Carolina, the U.S. District Court, District of South Carolina, and the U.S. Fourth Circuit Court of Appeals. Christian is a member of the Richland County and South Carolina Bar Associations, the South Carolina Defense Trial Attorneys' Association, the Defense Research Institute, the South Carolina Hospitality Association, the South Carolina Association of Convenience Stores, and the Global Alliance of Hospitality Attorneys.

# Legal Tips

## Hospitality Liability Report: Getting It In Writing — Making Sure Your Hotel, Restaurant, or Club Has Defense & Indemnity and Additional Insured Agreements with Your Vendors

On a very frequent basis, our hospitality clients are sued for something they didn't do. Stated more clearly, while accidents may have occurred on their properties or guests might have been injured by products sold at their locations, our clients weren't directly responsible for the alleged damages incurred by the claimants bringing suit. Instead, vendors doing business with our clients are the true culpable parties. It is something they either did (or didn't do) that triggered the litigation.

When defending a claim such as a slip and fall or a food adulteration allegation for our hospitality clients, it is our general practice to evalu-

ate whether there is a third party to whom the claim can be tendered. Accordingly, one of the first inquiries we make is whether there is a vendor that contracted to provide a service or product, which is the basis of the suit. If the claimant slipped and fell on an improperly waxed floor, did our client contract with a vendor to maintain the floors? If the claimant broke a tooth on a bone in a hamburger, where did our client buy the meat? If the claimant fell down allegedly ill-constructed stairs, then who was the architect and contractor on the project?

When the vendor is arguably responsible for the claim, our next question is: Was there a ven-

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dor agreement and/or an endorsement on the vendor's insurance policy in favor of our client? The existence of either one is extremely helpful when attempting to tender a claim to a vendor.

A vendor agreement is one typically signed between the principal (e.g., hotel, restaurant, club, etc.) and the vendor. This agreement lays out each party's duties and responsibilities to the other. A term often found in these agreements is a "defense and indemnification" clause. Such a clause protects the principal from the claims created by the tortious acts of the vendor by entitling the principal to a legal defense at the vendor's expense in the event of suit and requiring the vendor to pay the costs associated with a settlement or judgment. An example of such a clause in a case between a vendor and the principal includes the following language:

**Indemnification.** [Vendor] shall defend, indemnify, and hold harmless [Principal], as well as their subsidiaries and affiliates, and their respective officers, directors, agents, and employees from and against any and all actions, costs, claims, losses, expenses and/or damages, including attorneys' fees, arising out of

or resulting from the performance of the services including, but not limited to, any damage or loss to the [Principal's] equipment. [Vendor] shall further defend, indemnify, and hold harmless [Principal] from and against any and all actions, costs, claims, losses, expenses, and/or damages for personal injuries or death of any other person arising out of [Vendor's] services or the presence of [Vendor's] employees at [on Principal's premises]. The foregoing indemnification obligations shall not apply to the extent of [Principal's] negligence or willful misconduct. The provisions contained in this paragraph shall survive the termination of this Agreement.

Suggest your establishment always have such an agreement with any vendor that provides goods or services to you. In the event the vendor does not voluntarily accept the claim pursuant this agreement, your organization then arguably has a tenable claim for contractual indemnity against that vendor.

In addition to a "defense and indemnity clause," we advise our hospitality clients to obtain an express agreement with their vendors, which makes them "additional insureds" on their

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vendors' insurance policies. Further, we suggest such an agreement mandate the vendor's policy is primary with the principal's policy remaining secondary or excess. An example of language outlining such an agreement includes the following:

Insurance. [Vendor] shall carry and maintain at its own cost and expense the following:

a. **W o r k e r s ' Compensation** insurance including employers' liability that complies with the applicable workers' compensation laws governing [Vendor] and all employees working for [Vendor].

b. **Comprehensive general liability** insurance including contractual liability and liability for bodily injury or property damage, with a combined single limit of not less than \$1,000,000 each occurrence. Such insurance shall name [Principal] owner as an additional insured.

c. **Automobile liability** insurance including all owned, non-owned, and hired vehicles used in conjunction with the services for bodily injury or property damage with combined single limit of

not less than \$1,000,000 each occurrence.

All policies shall be specifically endorsed to provide that the coverages obtained by virtue of this Agreement will be primary and that any insurance carried by [Principal] shall be excess and non-contributory. All policies shall be specifically endorsed to provide that such coverage shall not be canceled or materially changed without at least thirty (30) days prior written notice to the general manager of [Principal]. [Vendor] shall deliver certificates of insurance and any renewals thereof to [Principal], which evidences the required coverages.

As noted in the above-provision, this agreement should require the vendor obtain coverage for not only general liability, but also workers' compensation and automobile liability. Moreover, your organization is well served by ensuring the vendor provides you with proof of insurance – better safe than sorry. Finally, in the event the vendor or its insurance carrier refuses to honor this agreement, your organization may possess a bad faith claim against the carrier.



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“Defense and indemnification” agreements, as well as “additional insured” agreements are valuable tools in the arsenal of a hospitality entity defending a claim for the tortious acts of a vendor. Your organization should review its files to ensure such agreements with its various vendors are in place. If they are not, it should work to do so.

Christian Stegmaier is a member of the Retail and Hospitality Liability Practice Group of Collins & Lacy, P.C., a Columbia-based defense litigation firm with a statewide practice. Christian welcomes your questions or comments regarding issues of liability in the hospitality sector by either calling him at (803) 256-2660 or emailing him at [cstegmaier@collinsandlacy.com](mailto:cstegmaier@collinsandlacy.com). This material is intended to provide information on noteworthy legal issues and is not a substitute for legal advice.

