



FROM EMERGING RISKS TO ESCALATING CLAIMS:  
**Understanding Liability Trends in the Real Estate and Hospitality Industry**

Chubb’s Real Estate & Hospitality (REH) Practice provides a broad range of property and casualty insurance backed by Chubb’s financial strength, global capacity, risk engineering services and claims expertise. As a leading insurer of the REH sector, Chubb endeavors to track claims and exposure trends impacting our clients, so we can work together to mitigate them. Here we highlight a few of the liability trends driving a higher frequency and severity of claims across the industry.

**Trend:**



Since 2016, Chubb has seen an **increase in general liability claim severity** within the first \$1 million of coverage of **56%**

Chubb’s analysis reveals:

**4 areas driving significant frequency and severity of claims** in the real estate and hospitality industry.

**Who we serve**

**Real Estate**

- Building owners
- Commercial property managers
- Real estate service firms
- Financial institution RE programs
- Real Estate Investment Trusts (REITs)

**Hospitality**

- Casinos
- Hotels/hotel managers
- Luxury resorts
- Mixed-use buildings

**1 Child Safety: Attractive Nuisance Claims**



Swimming pools, balconies, playgrounds, windows... fundamental features of a property can present substantial safety risks to children, and claims involving children can be especially severe. The “attractive nuisance” doctrine further heightens potential liability: An attractive nuisance is a condition on a property that a property owner should know is likely to appeal to children. It can run the gamut from pools, to mirrors, to construction sites and equipment. Property owners must demonstrate a “reasonable” degree of care to protect children from harm caused by the attractive nuisance, whether the minors are legally on a property or trespassing. Courts continue to raise the bar when considering what is reasonable care by a property owner.

*A three-year-old wandered into an apartment complex pool area through a broken gate and subsequently drowned. The complex had been cited multiple times for the broken gate. The family sued the property owner.*

The case settled for **\$3.95 million.**

*A five-year-old leaned on the window screen in her bedroom and suffered a fatal fall from the third-floor window. While the building had older windows grandfathered in to building codes, the windows represented an attractive nuisance. The family sued.*

The case settled for **\$2.5 million.**



## To help mitigate exposure to attractive nuisance claims:



- Enforce access and egress controls
- Proactively assess and secure all areas that could be considered an attractive nuisance
- Address and document known safety issues immediately
- Keep up to date on all maintenance and document it
- Establish proper signage and clear safety protocols

## 2 Contractual Liability



Proactively managing contractual liability can substantially mitigate the cost of a claim for property owners and mean the difference between facing liability or avoiding a claim altogether. With a properly written, legal counsel-reviewed and executed contract, a company can avoid paying unnecessarily for disputes and claims that may be the responsibility of third-party subcontractors or others. Poorly written contracts, or unexecuted contracts, can leave a company vulnerable and unnecessarily shouldering liability.



A resident sued the property owner after tripping and falling on ice and snow. The owner had contracted snow removal to a third party. **Because the owner included favorable indemnification language in their contract, the owner was able to tender defense and indemnification to the third-party defendant.**



As he backed out of a parking space, a tenant's customer did not see a female pedestrian walking behind his vehicle, possibly due to poor lighting. His truck hit the pedestrian, causing fatal injuries. Her estate sued for wrongful death damages, lost income and benefits. The property manager may have failed to follow up on a tenant's complaint about lights being out in the parking lot. **Nevertheless, the owner had promised indemnity to the property manager in their contract, so responsibility for all liabilities flowed to the owner, regardless of whether the property manager was at fault.**

The case settled for **\$2.6 million.**

## To help mitigate liability arising from work outsourced to third parties:

Keep contract wording as clear and specific as possible and have legal counsel review and approve all contracts as well as purchase orders and license and service agreements. Counsel should also review **contractor or vendor insurance policies** to be sure there are no exclusions that could protect them from tender or indemnity.



### Contracts should:

- Outline the scope of responsibilities/duties and include a clear description of areas to be serviced
- Limit liability
- Provide favorable indemnification provisions
- Include warranty disclaimers
- Articulate severability

▼  
**Even seemingly simple purchase orders and license and service agreements can be considered contracts and should include similar indemnification provisions to protect the property owner.**



### 3 New York Labor Law



New York Labor Law (NYLL) 240 makes property owners vicariously liable for failures to provide proper fall protection onsite, even if they are not at fault. The law imposes strict liability, placing no responsibility on a potentially negligent contractor. In fact, the New York Court of Appeals has stated repeatedly that there is no defense to liability under NYLL 240. Its application has also been expanded to include virtually any gravity-related incidents.



**NYLL 240 places a non-delegable duty on a property owner to prevent injuries that are the result of risks associated with the effects of gravity.**

*A New York property owner hired a property management company to provide on-premises maintenance. A property management employee fell from a ladder while painting a stairwell and suffered numerous injuries. The property manager is an insured under the owner's general liability policy, and the policy's construction exclusion does not apply to maintenance. A lawsuit was filed alleging violations of NYLL 200, 241 (6) and 240 (1), which places strict/absolute liability on the owner. The plaintiff needs to show that the safety equipment provided was defective or not provided at all. In this case, none was provided, the plaintiff suffered numerous injuries and never returned to work. Special damages were estimated at \$1.3 million; general damages at \$3 million to \$4 million.*

The case settled for over **\$4 million.**

#### To help mitigate liability associated with NYLL 240:



- Maintain a robust culture of safety focused on loss prevention, worker safety, and reducing or eliminating claims.
- Ensure that contractors have formal safety training programs for employees that work on-site.
- Keep all equipment (e.g., ladders, scaffolds) well maintained.
- When accidents happen, ensure experienced claims and litigation management specialists are engaged from the start. In many cases, prompt investigation and experienced defense counsel can keep settlement values from escalating.
- Be sure vendor contracts have solid indemnification provisions and vendor insurance policies do not have exclusions that would prevent indemnification (e.g., fall from heights exclusions).



## 4 Crime

Property owners have a duty to provide a safe environment and can be liable for criminal activity on their property if the incident is reasonably foreseeable and reasonable measures were not taken to guard against the crime.

*A woman alleged that she was assaulted by a hotel security guard who used his master key to enter her room while she slept. The perpetrator had a long criminal history. The hotel allegedly did not follow its own policies and procedures for hiring staff and was unaware of the criminal record.*

A jury awarded **\$177 million** in damages.

*A company was contracted to manage a property. After a female was sexually assaulted and killed by one of the squatters at the property, her estate filed suit against the landlord, the security company, and the property manager. The property manager tendered to the landlord and security company. As both parties include assault and battery and firearm exclusions in their general liability policies, the property manager was left as the sole defendant.*

The case may resolve for over **\$20 million**.

### To help mitigate liability from on-premises crime:



- Ensure that contracts for security contractors have clear indemnity language and contractor insurance policies do not have provisions that could impede indemnification (e.g., an assault and battery exclusion).
- Maintain security throughout facilities, including proper lighting indoors and outdoors, clear 'lines of sight,' controlled access.
- Provide ongoing security training for employees and third-party contractors.
- Establish and adhere to written policies and procedures for hiring, including background checks.

Learn more about [Chubb's Real Estate and Hospitality industry practice](#).

Chubb is the marketing name used to refer to subsidiaries of Chubb Limited providing insurance and related services. For a list of these subsidiaries, please visit our website at [www.chubb.com](http://www.chubb.com). Insurance provided by ACE American Insurance Company and its U.S.-based Chubb underwriting company affiliates. All products may not be available in all states. This material contains product summaries only. Coverage is subject to the language of the policies as actually issued. Surplus lines insurance sold only through licensed surplus lines producers. The material presented herein is advisory in nature and is offered as a resource to be used together with your professional insurance advisors in maintaining a loss prevention program. It is not intended as a substitute for legal, insurance, or other professional advice, but rather is presented for general information only. You should consult knowledgeable legal counsel or other knowledgeable experts as to any legal or technical questions you may have. Chubb, 202 Hall's Mill Road, Whitehouse Station, NJ 08889-1600.

The claim scenarios described here are intended to show the types of situations that may result in claims. These scenarios should not be compared to any other claim. Whether or to what extent a particular loss is covered depends on the facts and circumstances of the loss, the terms and conditions of the policy as issued and applicable law. Facts may have been changed to protect privacy of the parties involved.