



NEW OAK
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The Risk and Liability of Running a Farmers Market

by Katie Atkinson for VAFMA on October 12, 2022

Top Shelf Coverage for Every Season

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- I am an expert in Property & Casualty Insurance
 - ▷ Personal Auto, Home, and Business Insurance
 - ▷ Partner with Small Business Owners
 - ▷ Invest my time, knowledge, and expertise with every client I assist.
- I am an expert in Life Insurance
 - ▷ Mortgage Protection and Key Man Insurance





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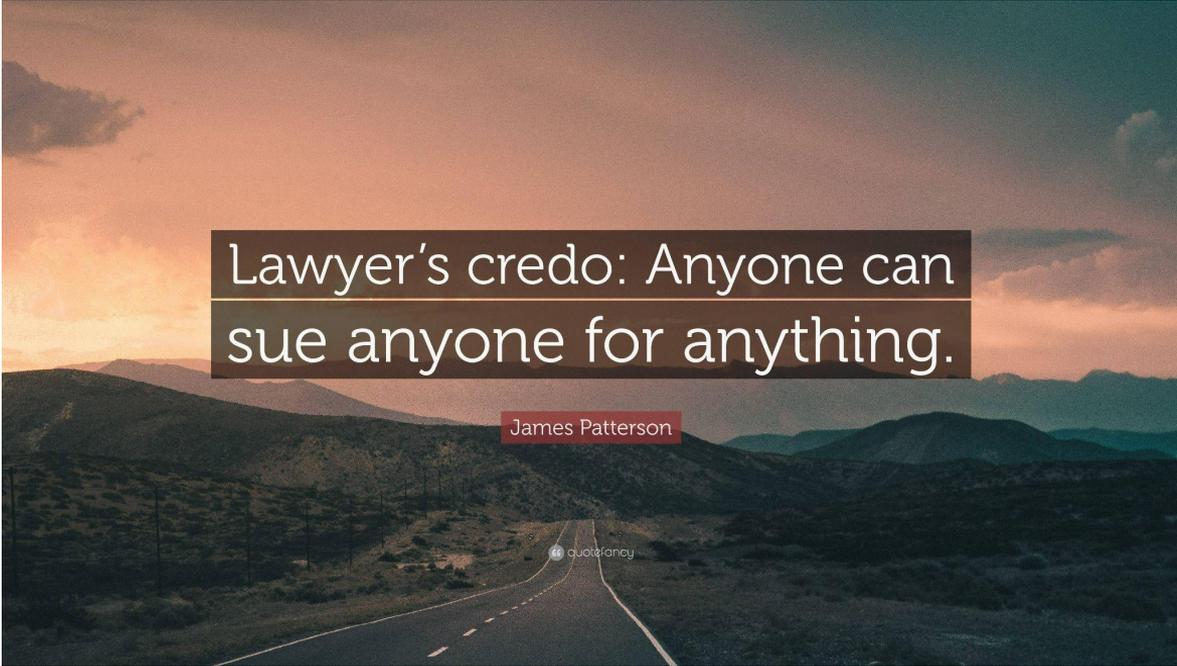
Disclaimer: I am not a lawyer. I am an insurance advisor. I am only responsible for my clients. All content contained in this presentation is generic; your needs are specific. Only your insurance advisor can ensure you're fully covered (so make sure you have a good one). If you need an expert, I'm currently accepting new clients.

1. Risks when Starting a Farmers Market or a Farmers Market Vendor
 - a. Why have insurance or a business entity?
 - b. Importance of General Liability Insurance in Running Your Business
 - c. What are the 5 Parts of General Liability Limits?
 - d. Where does the Farmers Market Stop and the Vendor Space Begin?
 - e. Certificates of Insurance, Additional Insured & Waivers of Subrogation
 - f. Location of the Farmers Market
 - g. Documentation Resources
2. Risks at the Farmers Market
 - a. Volunteers vs. Employees vs. Contractors vs. Board Member
 - b. Food Safety - Health Code & Food Safety Violations
 - c. Fire/Wind at the Farmer's Market
 - d. Delivery Services
 - e. Property Coverage
3. Annual Check-up for Next Year

Please ask questions during the talk! Feel free to type it in the chat!



Why Do I Need Insurance or a Business Entity?



Lawyer's credo: Anyone can
sue anyone for anything.

James Patterson

quartzfancy

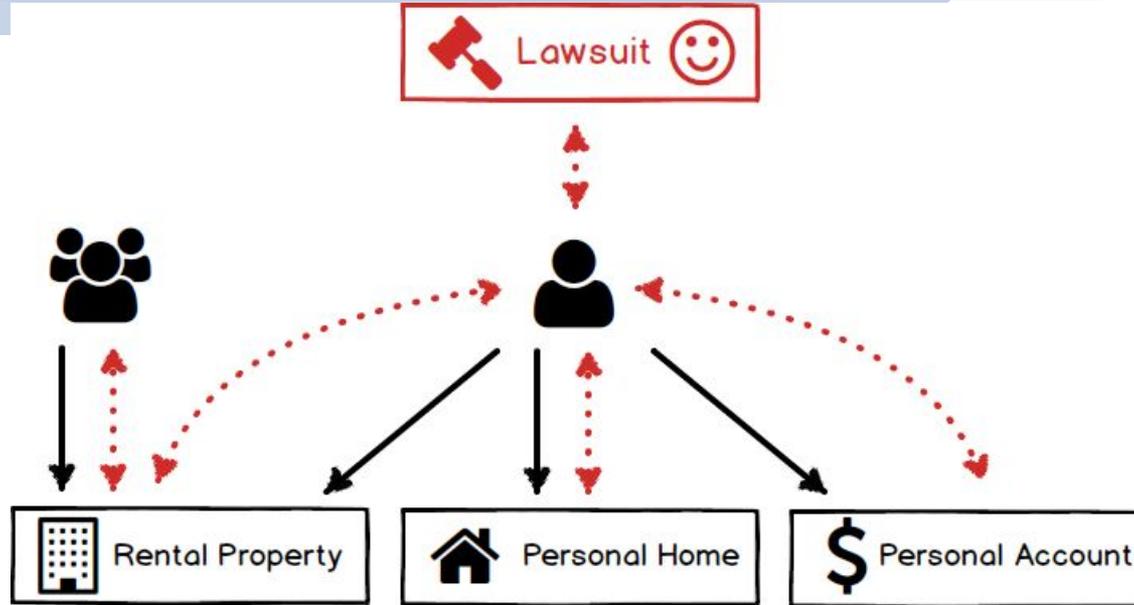


Anyone can sue anyone for anything.

1. Public Facing
2. Litigious Society
 - a. People have a long memory
3. Personal Asset Protection
4. How do you protect yourself and your business from costly lawsuits?



Form a Business Entity for Your New Venture



Because there is no asset protection shield, a judgment against the owner is enforceable against all of the owner's assets, including the business. This could jeopardize the business and is to the detriment of any other owners.

Importance of General Liability Insurance for Your Business

- Another layer of protection to keep your business running smoothly.
- Your insurance company will appoint a lawyer on your behalf. You do not need to pay for a lawyer out of your own pocket.



10 Most Common and
Costliest Small Business
Claims as of April 2015

Most Common	Most Costly
Burglary & Theft 20%	Reputational Harm \$50,000
Water and Freezing Damage 15%	Vehicle Accident \$45,000
Wind and Hail Damage 15%	Fire \$35,000
Fire 10%	Product Liability \$35,000
Customer Slip and Fall 10%	Customer Injury or Damage \$30,000
Customer Injury and Damage <5%	Wind and Hail Damage \$26,000
Product Liability <5%	Customer Slip and Fall \$20,000
Struck by an Object ,5%	Water and Freezing Damage \$17,000
Reputational Harm <5%	Struck by an Object \$10,000
Vehicle Accident <5%	Burglary and Theft \$8,000

General Liability Limits: What Does it Mean?

COVERAGES

CERTIFICATE NUMBER: 001

REVISION NUMBER: 001

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE		ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
B	<input checked="" type="checkbox"/>	COMMERCIAL GENERAL LIABILITY	X		SAMPLE	01/01/2022	01/01/2023	EACH OCCURRENCE	\$,1,000,000
	<input type="checkbox"/>	CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 1,000,000
	<input type="checkbox"/>							MED EXP (Any one person)	\$ 5,000
	<input type="checkbox"/>							PERSONAL & ADV INJURY	\$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:							GENERAL AGGREGATE	\$ 2,000,000
	<input type="checkbox"/>	POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						PRODUCTS - COMP/OP AGG	\$ 2,000,000
	<input type="checkbox"/>	OTHER:							\$
B	AUTOMOBILE LIABILITY				SAMPLE	01/01/2022	01/01/2022	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
	<input type="checkbox"/>	ANY AUTO						BODILY INJURY (Per person)	\$
	<input type="checkbox"/>	OWNED AUTOS ONLY						BODILY INJURY (Per accident)	\$
	<input checked="" type="checkbox"/>	HIRED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	\$
	<input type="checkbox"/>	<input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY							\$



General Liability Coverage: Each Occurrence & Aggregate

Occurrence: The amount that an insurance company will pay per individual insurance claim for bodily injury and/or property damage liability (unless otherwise noted).

Aggregate: The amount that an insurance company will pay in any one given policy year (unless otherwise noted).

LIMITS	
EACH OCCURRENCE	\$,1,000,000
DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 1,000,000
MED EXP (Any one person)	\$ 5,000
PERSONAL & ADV INJURY	\$ 1,000,000
GENERAL AGGREGATE	\$ 2,000,000
PRODUCTS - COMP/OP AGG	\$ 2,000,000



Claim Example: Bodily Injury

Capital City Farmer's Market

- Tripped and fell in an unmarked pothole resulting in a broken arm
- Almost 3 years later, a suit followed
- Awarded \$110,000 in damages



General Liability Coverage: Damage to Premises Rented to You

Damage to Premises Rented to You: Covers Damage that arises out of your legal liability (as opposed to an act of nature that is covered in the occurrence). Also known as fire legal liability.

LIMITS	
EACH OCCURRENCE	\$,1,000,000
DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 1,000,000
MED EXP (Any one person)	\$ 5,000
PERSONAL & ADV INJURY	\$ 1,000,000
GENERAL AGGREGATE	\$ 2,000,000
PRODUCTS - COMP/OP AGG	\$ 2,000,000

Sources: <https://www.thebalancemoney.com/liability-coverage-for-damage-to-rented-premises-462688>



Hypothetical Claim Example: Damage to Premises Rented to You



- Fried Turkey Special

Source: <https://www.copelandsatlanta.com/the-dangers-of-deep-frying-a-turkey-at-home/>



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General Liability: Medical Expenses

Medical Expenses: AKA Med Pay; the amount that an insurance company will pay without proving fault/liability.

LIMITS	
EACH OCCURRENCE	\$,1,000,000
DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 1,000,000
MED EXP (Any one person)	\$ 5,000
PERSONAL & ADV INJURY	\$ 1,000,000
GENERAL AGGREGATE	\$ 2,000,000
PRODUCTS - COMP/OP AGG	\$ 2,000,000

Sources:

<https://www.justinziegler.net/what-is-medical-payments-coverage-under-a-commercial-general-liability-insurance-policy/#:~:text=Medical%20Payments%20is%20a%20coverage,hurt%20on%20someone%20else's%20property.>



Hypothetical Claim Example: Medical Expenses

Unloading at a farmer's market

- Open your car door and a cyclist runs into your car, resulting in minor injuries.



General Liability: Personal & Advertising Injury

Personal Injury Liability: This covers liability arising from intentional torts, such as libel, slander, wrongful eviction, false arrest, and invasion of privacy.

Advertising Liability: This covers liability caused by harms from claims such as misappropriation of advertising ideas, style of doing business, or copyright infringement.

LIMITS	
EACH OCCURRENCE	\$,1,000,000
DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 1,000,000
MED EXP (Any one person)	\$ 5,000
PERSONAL & ADV INJURY	\$ 1,000,000
GENERAL AGGREGATE	\$ 2,000,000
PRODUCTS - COMP/OP AGG	\$ 2,000,000

Sources:

<https://www.insureon.com/insurance-glossary/personal-and-advertising-injury>



Hypothetical Claim Example: Personal & Advertising Injury

- An organization takes a picture of a customer shopping and does not realize that their credit card information is visible. They post the picture to social.
 - Personally identifiable information is sometimes excluded from general liability policies. If you take photos of the public, talk with your insurance advisor.
- **Note:** Advertising does not include non compliant labeling of products. Visit your state's labeling & food safety requirements.

Source:

<https://www.landesblosch.com/blog/personal-and-advertising-injury-coverage-explained/>

<https://www.blakemorgan.co.uk/restaurant-owner-found-guilty-of-gross-negligence-manslaughter-following-crown-court-trial/>



General Liability Coverage: Completed Operations and Products

Products-completed operations: a form of insurance coverage that protects you from customer lawsuits alleging property damage or injury due to your product or completed service.



Hypothetical Claim Example: Completed Operations and Products

- A Michigan man who bought food at a restaurant became ill and almost died from the food because it was contaminated with E. Coli. He eventually received a settlement of \$695,000 from the restaurant because they were held liable. If they didn't have insurance then the restaurant would have had to pay for all of his expenses.



Type Your Answer in the Chat!

How much do you think a typical general liability policy for costs for a year?

1 guess for the Farmers Market

1 guess for a Vendor

- A. \$200-\$400
- B. \$500-\$1,000
- C. \$1,000-\$3,000
- D. \$3,000 - \$10,000
- E. \$10,000+



Type Your Answer in the Chat!

How much do you think a typical general liability policy for costs for a year?

1 guess for the Farmers Market

1 guess for a Vendor

- A. \$200-\$500 Typical Vendor Cost**
- B. \$500-\$1,000 Typical Farmers Market Cost**
- C. \$1,000-\$3,000
- D. \$3,000 - \$10,000
- E. \$10,000+

Disclaimer: Every Market and Vendor is Different. The pricing is anecdotal from Katie's experience.



Where does the Farmer's Market Stop and the Vendor Space Begin?

- Interconnectedness
- As a market manager, you have an implicit legal obligation for the safety of your customers.
- The legal obligation may reasonably extend to the safety of the vendors you allow in your market.



What is a Certificate of Insurance?

- A certificate of insurance is a snapshot of the policy on that day that it is issued.
- As a farmer's market manager, how do you protect your market?
 - ▶ Good: Request to be a certificate holder.
 - ▶ Better: Request to be an additional insured.
 - ▶ Best: Request to be an additional insured, a waiver of subrogation, and to receive cancellation notice as allowed in your state.

Disclaimer: Please consult a lawyer in your state. I am making recommendations based on anecdotal experience in Virginia and knowledge of the insurance industry.



Certificates of Insurance : Additional Insured for Farmers Markets

Additional Insured: Extra layer of protection that extends coverage from the vendor's insurance to the market per written contractual agreement.



Hypothetical Claim Example: Additional Insured

- A barbeque vendor has a grill set-up with a long extension cord to a nearby building. A visitor trips on the cord and breaks their arm. In the resulting suit, the visitor files a suit not only against the vendor, but also the farmer's market since they allowed the vendor to set-up with a tripping hazard.
- Note: The Vendor was negligent and the farmer's market was implicitly involved. The additional insured endorsement extends the coverage to the farmer's market.



Certificates of Insurance: Waiver of Subrogation

Waiver of Subrogation: Subrogation insurance is when your insurance company, after paying a loss, inherits your right to recoup its payment from another party, if that party is also partially responsible for the loss. A waiver of subrogation relinquishes your right of subrogation.



Location of Farmers Markets and Your Risks

- Talk to the owner or manager of the property.
 - ▶ If it is a municipality, they may already have insurance for community programs including farmers markets.
- Be aware of the risks associated with your space. If you notice a potential risk such as an egregious pothole, then say something!
- Get it in writing.
- Everything is OK until it isn't.



Case Study: Location in Writing

- Mulberry Market in Macon, Georgia.
- Ongoing litigation as of October 3, 2022.
- Old Director retired, and 2 previous employees started a new organization to take over the managing the market.
- Due to ongoing litigation, the market is closed until a resolutions has been reached.
- Complications: There was no written agreement in place proving the previous organization's previous rights to the prime location.
- Takeaways: It's OK until it isn't. Please insist on agreements in writing.

Source:

<https://www.13wmaz.com/article/news/local/awsuit-imperils-future-of-wednesday-farmers-market-in-macon-georgia/93-06f96df7-e50c-4347-a5f8-d03de4e82a72>



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Commercial General Liability Insurance Resources

- Farmer's Markets Legal Toolkit from the Center for Agriculture and Food Systems
 - ▷ <https://farmersmarketlegaltoolkit.org/>
 - ▷ Case Studies Examples
- Virginia Farmers Market Association
 - ▷ Resources including Market Manager Certification and Virginia Produce Safety
 - ▷ <https://vafma.org/>
- Farmers Market Coalition
 - ▷ <https://farmersmarketcoalition.org/>



Risks at the Farmer's Market

- Volunteers vs. Employees vs. Contractors vs. Board Member
- Food Safety
- Emergency Preparedness including Fire and Wind
- Delivery Services



Risks at the Market: Disclaimer

We are traveling into the minutia of contract language. The examples given are anecdotal from Katie Atkinson's personal experience, but they are not an accurate representation of each insurance contract. Please consult your specific insurance contract and speak directly with your insurance advisor to gain the most accurate information for your policy.



Risks at the Market: Volunteers

- From an insurance standpoint, volunteers are not subject to the same coverage and rights as employees (such as workers compensation).
- One of the companies I work with, differentiates fundraising volunteers versus volunteers performing the normal duties of an employee.
- Volunteers are still a public facing ambassador for your company. Consider volunteer training and procedural resources.



Risks at the Market: Employees

- From an insurance standpoint, employees are afforded the coverage as an extension of the business.
- Consider training and written rules for conduct, safe food handling in accordance with your state, anti-discrimination training, sexual harassment training, and such.
- Check with your state for workers compensation requirements.
 - ▶ Virginia recently changed their laws where if a business has 2 or more employees, you must have workers compensation.



Risks at the Market: Contractors

- From an insurance standpoint, it depends.
- Does the contractor represent the business? If so, are they acting as a temporary employee or providing a separate service?
- If a contractor is injured while working for you and does not have their own workers compensation, then they may be covered through your workers compensation.



Risks at the Market: Board Members

- Board Members are typically excluded from Workers Compensation insurance.
- Board Members have the additional risk of being sued due to a decision they made.
- Consider Directors and Officers insurance to mitigate legal fees.

Source:

<https://www.insureon.com/small-business-insurance/directors-officers#:~:text=Your%20board%20members%20and%20officers.liability%20or%20professional%20liability%20policies.>



Risks at the Market: Directors and Officers Insurance

- Directors & Officers coverage protects organizational leadership in the event you are sued for an alleged wrongful act. It covers executives, directors and officers from liability arising from their decisions and actions taken on behalf of the organization such as:
 - ▷ Allegations of misstatements
 - ▷ Reporting errors
 - ▷ Inaccurate disclosures
 - ▷ Prospectus misrepresentations
 - ▷ Management decisions

Risks at the Market: Food Safety

- Consult with the state's food safety regulatory authority for the applicable laws.
- As a market manager, it is your responsibility to prioritize the safety of your customers. This responsibility may extend to the vendors in your market.
- Note: While insurance policies typically cover foodborne illness, criminal activity is specifically EXCLUDED. If you as a food vendor or market manager are knowingly operating against the state regulations, then you risk being criminally negligent.



Risks at the Market: Wind and Fire

- As a market manager, you need to have an emergency preparedness plan.
- As a vendor, you need to have an emergency preparedness plan.
- <https://farmersmarketcoalition.org/education/disaster-resources-markets-farmers/>



Risks at the Market: Wind Example

- In 2019, YMCA held a sporting event on a clear and cloudless day.
- A tornado-like gust of wind came from nowhere and blew a canopy into a woman and small boy. The woman had a crushed forehead and needed major surgery to repair the damage. She sued the YMCA and the YMCA in turn sued the supplier of the canopy.
- Takeaway: ALWAYS weight tent legs per manufacturer's specification (typically 25-50 lbs per leg).



Risks at the Market: Delivery

- Commercial Auto Insurance



General Liability & Commercial Auto: Hired and Non-Owned Auto

Hired and Non-Owned Auto: Liability for the company in case of injury to another party.

B	AUTOMOBILE LIABILITY		SAMPLE	01/01/2022	01/01/2022	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
	<input type="checkbox"/>	ANY AUTO				BODILY INJURY (Per person)	\$
	<input type="checkbox"/>	OWNED AUTOS ONLY				BODILY INJURY (Per accident)	\$
	<input checked="" type="checkbox"/>	HIRED AUTOS ONLY				PROPERTY DAMAGE (Per accident)	\$
	<input type="checkbox"/>	SCHEDULED AUTOS					\$
	<input checked="" type="checkbox"/>	NON-OWNED AUTOS ONLY					

Sources:

<https://www.thehartford.com/small-business-insurance/hired-non-owned-auto#:~:text=Hired%20coverage%20means%20your%20business,injury%20and%20property%20damage%20liability.>



Hypothetical Claim Example: Hired & Non-Owned Auto

- Sending your friend to the bank before closing
- Delivery Services



“ *Any Questions?* ”



THANK YOU FOR YOUR TIME!

**If you would like a comprehensive review for your
Farmers' Market or Vendor business, let's talk!**

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