

SPECIAL REPORT

ALL OF MY CONTRACTORS ARE INSURED. ISN'T THAT ENOUGH?

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We hear this from clients all the time, and the answer is that it is not enough! The reasons are as follows:

- The contractor's insurance may not protect you – even if the policy lists you as additional insured. There is a real possibility that an incorrect additional insured endorsement will be used and that the contractor's insurance limits will be insufficient. Furthermore, the issuance of a certificate of insurance does not amend the actual coverage which is controlled solely by the policy – not the certificate.
- The contractor's insurance company can actually sue you to recover what it pays if they can prove that the injury was caused entirely, or in part, because of your own negligence.
- Although it would be nice that your contractors have insurance and even give you a certificate of insurance, you cannot rely on someone else's insurance to protect your assets. The certificate of insurance is basically only worth the information that is provided. The missing ingredient is an indemnification agreement whereby the contractor agrees to indemnify you, that is to assume any claims made against you arising out of its operations, and provide that its insurance will be primary and not contributory to your insurance.
- Absent having this, if any contractor's employee is injured on your property, the employee can sue you. If the contractor causes injuries to other people, they can also sue you. You will have to incur the legal

defense costs to defend these cases and pay any judgments that may arise out of that litigation to the extent that you are not insured.

- Even if the contractor has insurance it may not be up to the standards that you require; and therefore, you need an agreement setting forth the specifics of the insurance the contractor is to provide for you.

In summary, you need to have a well-drafted insurance requirements and indemnification agreement. But even with this, never rely on this insurance and indemnification to protect your assets. Be sure that your insurance program has adequate limits and coverage.

The following is a suggested agreement that establishes the minimum standards that you should require, at a minimum, from contractors that do work for you. We have also provided a suggested indemnification provision.

INDEMNIFICATION AGREEMENT AND INSURANCE REQUIREMENTS FOR CONTRACTORS DOING BUSINESS WITH

_____ (OWNER)

I. Certificates of Insurance

- A. The Contractor, before the commencement of any work which is the subject of this agreement, shall provide a certificate of insurance to the Owner. The certificate of insurance shall provide evidence that the insurance requirements contained herein are satisfied in their entirety.
- B. The certificate shall also provide that at least 30 days prior notice of cancellation or material change shall be provided to the Owner.
- C. In the event the Contractor fails to provide said certificate or a certificate is not valid in whole or in part, the Contractor shall have the contractual obligation to pay any additional premiums, whenever incurred, imposed upon the Owner because of such failure.

II. Minimum Insurance Requirements

The following minimum insurance requirements apply to the Contractor each of which shall be placed through an insurer with an A.M. Best rating of "A" or better:

- A. Workers' Compensation and Employers Liability coverage covering the statutory requirements of the state where the work is being performed, insuring the Contractor, and including at least \$500,000 employers liability coverage. The policy shall include a waiver of subrogation in favor of Owner.
- B. "Occurrence" based Commercial General Liability insurance to cover liability arising out of the operations of the Contractor.

- 1) The limit of liability shall be at least \$1,000,000 combined single limit per occurrence, a general aggregate limit of at least \$2,000,000 and a products/completed operations aggregate of at least \$2,000,000.
 - 2) The policy shall have an endorsement applying the policy's aggregate limits by location or project.
 - 3) Coverage shall not exclude products and completed operations insurance.
 - 4) Products and completed operations insurance shall be maintained for at least three years after final payment to the Contractor.
 - 5) Insurance shall cover the contractual liability assumed by the Contractor in the "Agreement to Defend, Indemnify and Hold Harmless" that is part of this Agreement.
 - 6) The Owner of the property, its officers, directors, and employees shall be included as additional insureds. Such an additional insured endorsement shall not limit coverage for any additional insured to the negligent acts or omissions of the named insured, the work of the named insured, or the ongoing operations of the named insured. Such policy shall stipulate that the insurance afforded by the Contractor for the Owner, its officers, directors, shareholders, employees, members, managers, and assigns shall be primary insurance and that any insurance carried by the Owner, its officers, or employees shall be excess and not contributing.
 - 7) The Contractor shall also require that each of its subcontractors execute and comply with the insurance and indemnification requirements contained herein.
- C. Automobile liability insurance with a combined single limit of at least \$1,000,000 for bodily injury and property damage liability including Owner as additional insured.

III. Agreement to Indemnify

The Contractor agrees to the indemnification language indicated below and shall also require that all subcontractors retained on its behalf execute this same Agreement as part of the subcontractor agreement.

AGREEMENT TO DEFEND, INDEMNIFY AND HOLD HARMLESS

The Contractor hereby covenants and agrees to defend, indemnify and hold harmless the Owner, including related or subsidiary organizations and their employees, shareholders, officers, directors, managers, members, or assigns from all liability, claims, actions, causes of action, lawsuits and demands including attorney's fees and costs, fines and/or penalties for personal injury, bodily injury, death (including personal injury, bodily injury or death of the Contractor's own employees or the employees of any subcontractor) and/or property damage arising out of or in any way related to the Contractor's work or operations for or on behalf of the Owner on, about or away from the Owner' premises or associated with the breach of the Agreement or arising out of the Contractor's work or work of subcontractors employed by the Contractor to the extent permitted by law.

Agreed to this _____ day of _____, 20_____ by

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