

# The Basics and New Endorsements

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## How Insurance Requirements in Contracts Work

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# Presentation Outline

- I. Indemnification – Us vs. Them**
- II. Insurance Requirements – Drafting to Fit the Need**
- III. Verification of Coverage**
- IV. Document Retention Policy & Procedure**
- V. Claims**
- VI. The Electronic Manual**
- VII. Conclusion & Questions**

# Hidden (and Uninsured) Costs of Accidents

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- **Time lost from work by injured**
- **Lost time by fellow workers**
- **Loss of efficiency due to breakup of crew**
- **Lost time of supervision**
- **Decreased output of injured worker on return**
- **Cost to hire replacement employee**
- **Cost of training and/or break-in of new employee**

# Hidden (and Uninsured) Costs of Accidents (cont.)

- **Overtime paid to remaining employees**
- **Clerical time**
- **Building or facility damage**
- **Tool and equipment damage**
- **Production and/or schedule delays and liquidated damages potential**

*From International Risk Management Institute, Inc.*

# I. Indemnification – Us vs. Them

## I.A. How Does it Work?

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Insurance language *flows from* agreements made in indemnification

Insurance is the "collateral" for the indemnification. Ensures that there are funds available to *back up* the indemnity provisions.

Insurance Exposure and Coverage Types (1st party, 2nd Party, 3rd Party)

## **I.B Three Main Types of Indemnification**

### **1. Strict (or “Type I”) Indemnification**

- Contractor indemnifies campus/organization for all claims costs arising from project except entity’s Sole Negligence or willful misconduct.

### **2. Intermediate Form (Construction Projects)**

- Contractor Indemnifies except for entity’s active negligence or willful misconduct

### **3. Limited Form**

- Contractor indemnifies for contractor’s negligence
- Can be used for cross indemnity

*See CSU OGC and IRIC Manual Version 5.0c, p. 123-125*

## Note On Hold Harmless Agreements:

- **It is important to make certain that attorney fees and litigation expenses are assumed by the contractor in the indemnity and hold harmless section of the contract. Failure to do so will result in these expenses not being covered.**

*Additionally, the new Commercial General Liability form restricts defense costs to only those lawsuits involving issues that are covered perils under the contractor's insurance.*

## I.C. Just Say No?

### Where to Draw the Line

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- **At what point will the campus/organization be so exposed that the proposed indemnity clause is too risky?**
- **Recommendation:** Focus on indemnification before insurance
- **Recommendation:** Involve campus' University Counsel or organization's general counsel in a review

## II. Insurance Requirements

### - Drafting to Fit the Need

- Evaluate the risk

- *Who* could be harmed? Visitors attracted?
- *What* are the activities and maximum likely loss? Dangerous? Crowds? Pollution? Alcohol?
- *Where* ? On vs. off campus? Site control?
- *When* ? Night? During sporting events?
- *How* likely would the campus/organization be a defendant if there is a loss?

## **II.A. The Basics – See Exec Order 849**

- **Avoid terms that do not have meaning in the insurance industry**
- **Request coverage on an occurrence basis, except professional liability**
- **Describe maximum deductibles or self insured retentions**
- **Require the addition of the campus/organization, etc. as an additional insured by endorsement to all policies except workers' compensation and professional liability**

## **II.A. The Basics – See Exec Order 849 (cont)**

- **Require the other party's insurance be primary**
- **Require at least 30 days notice of cancellation**
- **Require an aggregate limit higher than the occurrence limit**
- **Specify that insurance be placed with insurers that meet an A.M. Best's minimum rating of at least A:VII**
  - **Financial Strength to determine if carrier is strong enough to back the insurance contract that is backing the indemnification language**
  - **Management Rating = Letters**
  - **Financial Size Category = Roman Numerals**

## II.B. Insurer Ratings

- **Two Main Rating Agencies**
  - **Standard & Poors**
  - **A.M. Best**

Best Ratings		Standard and Poors	
A++, A+	Superior	AAA	Extremely Strong
A, A-	Excellent	AA +/-	Very Strong
B++, B+	Very Good	A +/-	Strong
B, B-	Good	BBB +/-	Adequate
C++, C+	Fair	BB +/-	Less Vulnerable
C, C-	Marginal	B +/-	More Vulnerable
D	Below Minimum Standards	CCC +/-	Currently Vulnerable
E	Under State Supervision	CC +/-	Currently Highly Vulnerable
F	In Liquidation	R	Under Regulatory Supervision
+,- These signs following the letter rating indicate the relative position within the class			

# Best's Financial Size Category (FSC)

## Reported Capital, Surplus and Conditional Reserve Funds (in Millions)

- **FSC VII** \$50 to \$100
- **FSC VIII** 100 to 250
- **FSC IX** 250 to 500
- **FSC X** 500 to 750
- **FSC XI** 750 to 1,000
- **FSC XII** 1,000 to 1,250
- **FSC XIII** 1,250 to 1,500
- **FSC XIV** 1,500 to 2,000
- **FSC XV** Greater than \$2,000

## II.C. How Much Coverage is Enough?

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- **Tort Costs increased 14.4% in 2001 and 13.3% in 2002.**
  - (Tillinghast's US Tort Costs: 2003 Updates)
- **Jury Verdicts Up Substantially**
  - (See [www.iii.org](http://www.iii.org))
- **Analyze the Exposure**
- **Maximum Possible vs. Maximum Probable Loss**

# Typical Contractor Insurance Program

<p><b>\$5 ML</b></p>	<p><b>Umbrella Liability</b></p>			<p><b>Unlimited Contract \$ "Statutory"</b></p>	<p><b>Replacement Cost</b></p>	
<p><b>\$1 ML</b></p>	<p><b>Business Auto Liability</b></p>	<p><b>Comm'l General Liability</b></p>	<p><b>Employers Liability</b></p>	<p><b>Workers' Compensation</b></p>	<p><b>Property, Including Builders Risk (aka Course of Construction)</b></p>	<p><b><u>Bonds</u></b></p> <ul style="list-style-type: none"> <li>• Bid</li> <li>• Performance</li> <li>• Payment</li> </ul>
<p><b>S.I.R.</b></p>						

## II.D. Bid Situations

- **Would your campus/organization decline a bid not meeting the minimum requirements?**
- **Drafting with wiggle room to allow the entity to accept the best bid in light of all the facts and circumstances**

**APPENDIX E**

**Project Name/Purchase** \_\_\_\_\_

Check One: Construction \_\_\_ Services (specify) \_\_\_\_\_

Purchase \_\_\_ Lease (specify) \_\_\_\_\_

**Insurance Company Ratings, Coverage and Limit Guidelines**

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**BEST Secure Ratings  
RECOMMENDED**

NOT

Superior	A++	A+	Excellent	A	A-	Very Good	B++	B+
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**BEST Financial Size Categories  
RECOMMENDED**

NOT

Class XI – XV	Class VII – X	Class I - VI
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**Coverage Minimum Limit Guidelines**

Form	Basis	High Risk	Medium Risk	Low Risk	NOT RECOMMENDED		Approved Amount	N/A	
CGL	Occurrence	\$5 million	\$2 million	\$1 million	\$500,000	\$250,000			
	Aggregate	\$10 million	\$5 million	\$2 million	\$1 million	\$500,000			
BAC WC and EL	Occurrence		\$2 million	\$1 million	\$500,000	\$250,000			
		Statutory Limits							
		\$1 million			\$500,000	\$250,000			
+++ Option for sole proprietors and excluded employees +++									
	Health Ins	Employment related injuries not excluded							
	Disability	Comparable to Statutory limits							
CC/BR		Completed Project Value							
Property E&O/PL	Occurrence*	Full Replacement-No Coinsurance							
		\$10 million	\$5 million	\$1 million	\$500,000	\$250,000			
Pollution	Occurrence*	\$10 million	\$5 million	\$1 million	\$500,000	\$250,000			
	Aggregate	\$10 million	\$5 million	\$1 million	\$500,000	\$250,000			
*Claims Made			5 year tail	3 year tail	1 year tail	no tail			

Indicate approved amount unless recommended coverage is not applicable

Recommendation \_\_\_\_\_ Date \_\_\_\_\_  
Project Manager/Purchasing Agent

Approval \_\_\_\_\_ Date \_\_\_\_\_  
Director Facilities Planning/Director Support Services

(continued)...

## II.H. I'm the Contractor

*When your campus/organization contracts, keep in mind*

- ✓ **Role Reversal**
- ✓ **Can you comply with the Insurance Requirements if you are self-insured?**

## **III. Verification of Coverage**

- A. Having a Process**
- B. Using the Process**
- C. Get Involved Early**
- D. Sample Certificate**
- E. Sample Checklist**

# Sample Certificate

**driveralliant**  
INSURANCE SERVICES

INTEGRATED INSURANCE & FINANCIAL SERVICES

## APPENDIX B

ACORD <sup>TM</sup> CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YY)			
PRODUCER		THIS CERTIFICATE IS ISSUED AS MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.			
<p>This block identifies the Agent or Broker.</p> <p>This notice confirms the provisions of the California Insurance Code, or other</p>					
INSURED		INSURERS AFFORDING COVERAGE			
<p>4 The insured is your</p>		The insurer will be identified here. The insurer letter appears again in the left-hand margin near			
COVERAGES					
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. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.					
INS R LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
3	GENERAL LIABILITY COMMERCIAL GENERAL LIABILITY CLAIMS MADE OCCUR	5 This notice again states that the policy supersedes the certificate form.	8	These two column shows inception and expiration dates for policies identified. Pay special attention that coverage does not expire before or during your project or lease.	EACH OCCURRENCE \$
	GEN'L AGGREGATE LIMIT APPLIES PER POLICY PROJECT DC				FIRE DAMAGE (By or for) \$
	AUTOMOBILE LIABILITY ANY AUTO ALLOWED AUTOS SCHEDULED AUTOS HIRED AUTOS NONOWNED AUTOS				PERSONAL & AUTO INJURY \$
	GARAGE LIABILITY ANY AUTO				GENERAL AGGREGATE PRODUCTS-COMP/OP AGG \$
	EXCESS LIABILITY OCCUR				COMBINED SINGLE LIMIT (By or for) \$
	DEDUCTIBLE RETENTION \$				BODILY INJURY (By person) \$
	WORKERS' COMPENSATION AND EMPLOYERS LIABILITY				BODILY INJURY (By or for) \$
	OTHER				PROPERTY DAMAGE (By or for) \$
					AUTO ONLY- EA ACCIDENT \$
					OTHER THAN AUTO ONLY- EA ACC AGG \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					MIC STATUS- TORY LIMITS OTH- ER \$
					E.L. EACH ACCIDENT \$
					E.L. DISEASE- EA EMPLOYEE \$
					E.L. DISEASE- POLICY LIMIT \$
DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY					11
9 This section will usually be used to restrict coverage to a specific job or lease. Watch for restrictions that would omit the coverage required by your specifications.					
CERTIFICATE HOLDER		ADDITIONAL INSURED; INSURER LETTER:		CANCELLATION	

Insurance Requirements in Contracts

Edition: October 2006 Version 5.0c

# Sample Checklist

## APPENDIX E

### CONTRACT REVIEW CHECKLIST

#### HOLD HARMLESS / INDEMNIFICATION REVIEW

1. Contract Date/Parties: \_\_\_\_\_
2. Party(ies) Accepting Risk: \_\_\_\_\_
3. Type of Risk Accepted:       Negligence       Other
4. Breadth of Risk Accepted:     Own                       Joint                       Sole
5. Nature of Damage/Injury Accepted:     Direct                       Consequential
- Property Damage:                       Our property                       Other party's property                       Property of third persons
- Bodily injury/personal injury:                       Our employees                       Other party's employees                       Third party employees

#### INSURANCE REVIEW

*No answer means either it is not mentioned in the contract or it is specifically rejected.*

	Required of you		Required of Other Party	
	YES	NO	YES	NO
1. Liability Insurance				
a. Is it required?	_____	_____	_____	_____
b. Limits of liability	\$ _____	_____	\$ _____	_____
c. Special coverages required	_____	_____	_____	_____
d. Occurrence vs. claims made coverage	_____	_____	_____	_____
e. Named as additional insured	_____	_____	_____	_____
f. Cross liability	_____	_____	_____	_____
g. Contractual limits required	_____	_____	_____	_____
h. Cancellation notice	# days: _____	_____	# days: _____	_____
i. Certificate or other evidence	_____	_____	_____	_____
j. Other _____	_____	_____	_____	_____
2. Workers' Compensation				
a. Is it required?	_____	_____	_____	_____
b. Contractor's employee/borrowed servants	_____	_____	_____	_____
c. Waiver of subrogation	_____	_____	_____	_____
d. Federal acts	_____	_____	_____	_____
e. All states and employer's stop gap	_____	_____	_____	_____
f. Cancellation notice	# days: _____	_____	# days: _____	_____
g. Certificate or other evidence	_____	_____	_____	_____
h. Other _____	_____	_____	_____	_____
3. Property Insurance				
a. Is it required?	_____	_____	_____	_____
b. Valuation method required	ACV    RV	_____	ACV    RV	_____
c. Additional named insured/for additional insured	_____	_____	_____	_____
d. Waiver of subrogation	_____	_____	_____	_____
e. Cancellation notice	# days: _____	_____	# days: _____	_____
f. Certificate or other evidence	_____	_____	_____	_____
g. Other _____	_____	_____	_____	_____
4. Automobile Liability Insurance				
a. Is it required?	_____	_____	_____	_____
b. Limits of liability	\$ _____	_____	\$ _____	_____
c. Covered vehicles	_____	_____	_____	_____
d. Contractual liability	_____	_____	_____	_____
e. Cancellation notice	# days: _____	_____	# days: _____	_____
f. Certificate or other evidence	_____	_____	_____	_____
g. Other _____	_____	_____	_____	_____

Back

## Note the New Commercial General Liability Form (12/04):

- Restricts defense costs for indemnitees and limits for insureds
  - “Insured contract” must include obligation of cost to defend
  - No conflict exists between insured and indemnitee (*we'll explore this again later*)
  - Agree to same defense counsel
  - ***If conditions not met - defense costs erode policy limits***

# Additional Insured Endorsements

- **MUST** have to amend the policy.
- “This endorsement modifies insurance provided under the following”:
- Insurer endorsement – may or may not be on ISO form – equivalent wording OK
- Owner endorsement – often will sign endorsement provided in material. Use as a checklist vs. what you receive

# Additional Insured Endorsement

- Two common insurer endorsements that are acceptable are Insurance Services Office (ISO) Form No. CG 20 09 11 85 and CG 20 10 11 85 (see Appendix B handout)
- Do NOT accept CG 20 10 **10 93** or **03 94** for liability arising out of “your *ongoing* operations” – want “your work” coverage especially for any construction exposure

# Additional Insured Endorsements

- Newer endorsements forms that are acceptable, if CG 20 10 11 85 not available:
  - CG 2010 10 01 = “ongoing operations”
  - CG 2037 10 01 = “your work” – “products – completed operations hazard”
- Must have both to get the same coverage as the 11 85 form

# Additional Insured Endorsements

- **What about the new CG 20 10 2004 version?**

**Section II . Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

- 1. Your acts or omissions; or
  - 2. The acts or omissions of those acting on your behalf; in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.
- ***(deleted: "your ongoing operations")***

# Additional Insured Endorsements

- What about the new CG 20 37 2004 version?

**Section II . Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" **(*deleted* – "arising out of")** caused, in whole or in part, by "your work" at the location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

# Latest Forms and Endorsements

## Changes to “Insured Contract” Definition

- New Endorsement (CG 24 26 06 04) amends definition of “Insured Contract”
- Likely will be incorporated in next revision of CGL policy
- Limits contractual liability coverage to vicarious liability of the indemnitee
- Eliminates coverage for “Broad Form” indemnity agreements, not allowed in CA, so impact here will be minimal
- However, may help set up conflict of interest

# Latest Forms and Endorsements

## Changes to “Insured Contract” Definition

Paragraph 9. of the Definitions Section is replaced by the following:

9. “Insured contract” means:

- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
  
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for “bodily injury” or “property damage” to a third person or organization, provided the “bodily injury” or “property damage” is caused, in whole or in part, by you or by those acting on your behalf. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

**CG 24 26 06 04** *(emphasis added)*

## **IV. Document Retention Policy & Procedure**

- **Your Certificates & Endorsements are your insurance policy**
- **How long does your campus/organization keep its own insurance policies?**
- **Alternative storage methods**
- **Sample Policy & Procedure**

# V. Claims

## A. Responding to Loss Events


## B. Reporting to Contractor's Insurers

## C. The Subcontractor's Subcontractor

- Chasing Certificates and Endorsements
- Special Situations (such as Underwater Construction, Asbestos Removal, Blasting)

## D. Negotiating Your Coverage

# VI. The Electronic Manual



**INSURANCE  
REQUIREMENTS  
IN CONTRACTS**

**A Procedure Manual**  
*Version 5.0c ♦ October 2006*

**CALIFORNIA STATE UNIVERSITY RISK MANAGEMENT AUTHORITY**

**CSURMA**

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# **CASE STUDIES**

# Case Study #1

- *Contractor Holds all the Cards*

**Imagine that your campus/organization has the opportunity to attract a high profile project which involves investment of over \$25,000,000 in construction plus ongoing operations. The project includes a lease of land from the campus/organization and is regarded as a PR bonanza to the entity. Lessee is mainly self-insured and refuses strict indemnity and insurance requirements. Time is running out to close the deal. You're the risk manager. What do you do?**

## Case Study #2

- *The Recently Retired Expert*

**Your campus/organization has contracted for construction of a complex facility involving significant exposure if there is a structural failure. Your campus/organization's construction manager who is responsible for overseeing execution of the project retires during the job. Your campus/organization wants to hire the retired construction manager to oversee completion of the job. What should you do about indemnification?**

## Case Study #2 (cont.)

- *The Recently Retired Expert*

We discussed indemnification by the recently retired expert who your campus/organization would like to serve as construction manager on a complex capital project. What do you do about insurance requirements?

- **General Liability**
- **Auto Liability**
- **Professional Liability**
- **Workers' Compensation**

## Case Study #3

- *The Purchase Order Problem*

Imagine that your campus/organization uses purchase orders for a wide-variety of contracting! The back side of the purchase order includes the fine print, including indemnification and insurance language.

- How should you determine what coverage is appropriate?
- What do you do about verification of coverage?
- What if the back of the purchase order refers to your web site that describes indemnification and insurance?

## Case Study #4

- *The Last Minute Contract or Event*

**You are not going to believe this, but imagine you are the risk manager of a campus/organization and at 4:59 p.m. on Friday, July 3<sup>rd</sup>, you are informed that a substantial fireworks display has been added to an event. Your campus is located in an area with high winds, near open range outside town and it is a drought year. The pyrotechnics vendor has provided a certificate evidencing standard Commercial General Liability coverage, but no endorsement for pyrotechnics. What do you do?**

## Case Study #5

- *I Can't Afford Your Limits*

Your campus/organization has a goal of contracting with local vendors if possible. One of the local vendors is a Mom & Pop catering business. They want to operate a stand at your event center. The catering business is scheduled on their CGL policy which has a \$250,000 liability limit. They say the cost of commercial liability insurance with a \$1,000,000 would be an additional \$1,500 - which is more than their expected profit from operating the stand at the event center. What do you do?

## Case Study #6

- *I Can't Find An "A" Rated Company!*

**Your campus/organization is contracting with a firm for a minor remodeling project. The contractor submits insurance showing a B+ VIII Commercial General Liability insurer. What do you do?**

- ✓ **What if the B+ VIII paper was instead providing Workers' Compensation coverage?**
- ✓ **What if the State Compensation Insurance Fund (unrated) is the provider?**

## Case Study #7

- *The Suspicious Certificate and Endorsement*

**Your campus/organization has contracted for waste disposal. You receive a certificate which shows that the producer of the certificate is the Charlene Minnick Insurance Agency. The certificate is signed by Charlene Minnick, and the endorsement provided exactly as requested is signed by Charlene Minnick. What do you do?**

## VII. Conclusion & Questions

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