The Basics and New Endorsements

How Insurance Requirements in Contracts Work

Fitting the Pieces Conference
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Presented by:

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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

- 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.A. How Does it Work?

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 for CSU standard language.*
I.C. Just Say No?
Where to Draw the Line

- 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?

*See Executive Order 849 regarding risk assessment*
II.B. Insurer Ratings

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

<table>
<thead>
<tr>
<th>A.M. Best Ratings</th>
<th>Standard and Poors</th>
</tr>
</thead>
<tbody>
<tr>
<td>A++, A+</td>
<td>AAA</td>
</tr>
<tr>
<td>Superior</td>
<td>Extremely Strong</td>
</tr>
<tr>
<td>A, A-</td>
<td>AA +/-</td>
</tr>
<tr>
<td>Excellent</td>
<td>Very Strong</td>
</tr>
<tr>
<td>B++, B+</td>
<td>A +/-</td>
</tr>
<tr>
<td>Very Good</td>
<td>Strong</td>
</tr>
<tr>
<td>B, B-</td>
<td>BBB +/-</td>
</tr>
<tr>
<td>Good</td>
<td>Adequate</td>
</tr>
<tr>
<td>C++, C+</td>
<td>BB +/-</td>
</tr>
<tr>
<td>Fair</td>
<td>Less Vulnerable</td>
</tr>
<tr>
<td>C, C-</td>
<td>B +/-</td>
</tr>
<tr>
<td>Marginal</td>
<td>More Vulnerable</td>
</tr>
<tr>
<td>D</td>
<td>CCC +/-</td>
</tr>
<tr>
<td>Below Minimum Standards</td>
<td>Currently Vulnerable</td>
</tr>
<tr>
<td>E</td>
<td>CC +/-</td>
</tr>
<tr>
<td>Under State Supervision</td>
<td>Currently Highly Vulnerable</td>
</tr>
<tr>
<td>F</td>
<td>R</td>
</tr>
<tr>
<td>In Liquidation</td>
<td>Under Regulatory Supervision</td>
</tr>
</tbody>
</table>

+,- 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
Insurers with strong ratings are far less likely to become impaired over long periods of time. Especially important in long-tailed lines.

II.C. How Much Coverage is Enough?

- Tort Costs increased 14.4% in 2001, 13.3% in 2002, 5.5% 2003, 5.7% in 2004 and 0.05% in 2005.
  - An average annual increase of 9.5% over the past 55 years.
  - (Tillinghast’s US Tort Costs: 2006 Update)
- Jury Verdicts Up Substantially
  - (See www.iii.org)
- Analyze the Exposure
- Maximum Possible vs. Maximum Probable Loss
# Typical Contractor Insurance Program

<table>
<thead>
<tr>
<th>$5 ML</th>
<th>$1 ML</th>
<th>S.I.R.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Umbrella Liability</strong></td>
<td><strong>Unlimited Contract $ “Statutory”</strong></td>
<td><strong>Replacement Cost</strong></td>
</tr>
<tr>
<td>Business Auto Liability</td>
<td>Employers Liability</td>
<td>Workers’ Compensation</td>
</tr>
<tr>
<td>Commercial General Liability</td>
<td>Property, Including Builders Risk (aka Course of Construction)</td>
<td>Bonds</td>
</tr>
<tr>
<td></td>
<td></td>
<td>o Bid</td>
</tr>
<tr>
<td></td>
<td></td>
<td>o Performance</td>
</tr>
<tr>
<td></td>
<td></td>
<td>o Payment</td>
</tr>
</tbody>
</table>
II.D. Bid Situations

- Should 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**

<table>
<thead>
<tr>
<th>BEST Secure Ratings</th>
<th>RECOMMENDED</th>
</tr>
</thead>
<tbody>
<tr>
<td>Superior</td>
<td>A++ A+</td>
</tr>
<tr>
<td>Excellent</td>
<td>A</td>
</tr>
<tr>
<td>Average</td>
<td>A-</td>
</tr>
<tr>
<td>Very Good</td>
<td>B++ B+</td>
</tr>
</tbody>
</table>

**BEST Financial Size Categories**

<table>
<thead>
<tr>
<th>RECOMMENDED</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class XI – XV</td>
</tr>
<tr>
<td>Class VI – X</td>
</tr>
<tr>
<td>Class I - VI</td>
</tr>
</tbody>
</table>

**Coverage**

**Minimum Limit Guidelines**

<table>
<thead>
<tr>
<th>Form</th>
<th>Basis</th>
<th>High Risk</th>
<th>Medium Risk</th>
<th>Low Risk</th>
<th>NOT RECOMMENDED</th>
<th>Approved Amount</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>CSL</td>
<td>Occurrence</td>
<td>$5 million</td>
<td>$2 million</td>
<td>$1 million</td>
<td>$500,000</td>
<td>$250,000</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Aggregate</td>
<td>$10 million</td>
<td>$5 million</td>
<td>$2 million</td>
<td>$1 million</td>
<td>$500,000</td>
<td></td>
</tr>
<tr>
<td>BAD</td>
<td>Occurrence</td>
<td>$1 million</td>
<td>$2 million</td>
<td>$1 million</td>
<td>$500,000</td>
<td>$250,000</td>
<td></td>
</tr>
<tr>
<td>WC and EL</td>
<td>Aggregate</td>
<td>$10 million</td>
<td>$5 million</td>
<td>$1 million</td>
<td>$500,000</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**$1 million**

<table>
<thead>
<tr>
<th>Property</th>
<th>Full Replacement/No Compliance</th>
</tr>
</thead>
<tbody>
<tr>
<td>E&amp;PL</td>
<td>( \text{Occurrence}^* ) $10 million</td>
</tr>
<tr>
<td></td>
<td>( \text{Aggregate}^* ) $10 million</td>
</tr>
</tbody>
</table>

**Pollution**

| Form     | \( \text{Occurrence}^* \) $10 million | $5 million | $1 million | $500,000 | $250,000 |
|----------| \( \text{Aggregate}^* \) $10 million | $5 million | $1 million | $500,000 |

**Claims**

<table>
<thead>
<tr>
<th>Form</th>
<th>5 year tail</th>
<th>3 year tail</th>
<th>1 year tail</th>
<th>no tail</th>
</tr>
</thead>
</table>

Indicate approved amount unless recommended coverage is not applicable.

**Recommendation**

Project Manager/Purchasing Agent

Date ____________________________

**Approval**

Director Facilities Planning/Director Support Services

Date ____________________________

(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. Getting Involved Early
D. Sample Certificate
E. Sample Checklist
### Sample Checklist

#### APPENDIX E

**CONTRACT REVIEW CHECKLIST**

**HOLD HARMLESS / INDEMNIFICATION REVIEW**

1. Contract Date/Section: ___________________________________________
2. Party/ies Accepting Risk: 
   - [ ] Directed 
   - [ ] Other
3. Breach of Risk Accepted: 
   - [ ] Own 
   - [ ] Joint 
   - [ ] Sole
4. Nature of Damage/Injury Sustained: 
   - [ ] Direct 
   - [ ] Consequential 
   - [ ] Other
   - [ ] Our property 
   - [ ] Other party's property 
   - [ ] Property of third person
   - [ ] Our employee 
   - [ ] Other party's employee 
   - [ ] Third party employee

**INSURANCE REVIEW**

1. Liability Insurance
   - [ ] Is it required?
   - [ ] Limits of liability: ________________________________
   - [ ] General insurance required: ________________________________
   - [ ] Workers' compensation required: ________________________________
   - [ ] Other: ________________________________
   - [ ] Confidential/limited access required: ________________________________
   - [ ] Other: ________________________________

   **Required of you**
   - [ ] Yes
   - [ ] No

   **Required of Other Party**
   - [ ] Yes
   - [ ] No

2. Workers' Compensation
   - [ ] Is it required?
   - [ ] Limits of liability: ________________________________
   - [ ] Other: ________________________________

   **Required of you**
   - [ ] Yes
   - [ ] No

   **Required of Other Party**
   - [ ] Yes
   - [ ] No

3. Property Insurance
   - [ ] Is it required?
   - [ ] Limits of liability: ________________________________
   - [ ] Other: ________________________________

   **Required of you**
   - [ ] Yes
   - [ ] No

   **Required of Other Party**
   - [ ] Yes
   - [ ] No

4. Automobile Liability Insurance
   - [ ] Is it required?
   - [ ] Limits of liability: ________________________________
   - [ ] Other: ________________________________

   **Required of you**
   - [ ] Yes
   - [ ] No

   **Required of Other Party**
   - [ ] Yes
   - [ ] No
**Additional Insured Endorsements**

- MUST have to amend the policy.
- 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 close to the same coverage as the 11 85 form
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 & data corruption
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

Available online at www.csurma.org
VII. Conclusion & Questions