

THE
*Sweet
Success*

OF RISK MANAGEMENT

PARMA ANNUAL CONFERENCE

FEBRUARY 7-10, 2023

SACRAMENTO CONVENTION CENTER

G3 Hitting the Sweet Spot – Having an Insurance Requirements in Contracts Process that Works Efficiently and Industry Updates

Presented By:

Daniel J. Howell

Shadi Jalali

Thursday, February 9 2023 3:30pm-4:45pm





Insurance Requirements in Contracts

Advanced Topics

PARMA

February 9, 2023

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Our Goal

Provide you with information on the **changing landscape**
and discuss **advanced topics**.

Terms and
Conditions
May Apply



Caveat

Consult with Legal/Risk Management before
changing contract language.



Outline

- **I. IRIC Processes & Manual v.2023 Updates**
- **II. Construction Risks**
- **III. Other Topics**



I. IRIC Processes and Manual v.2023 Updates

Insurance Requirements in Contracts (IRIC) Manual

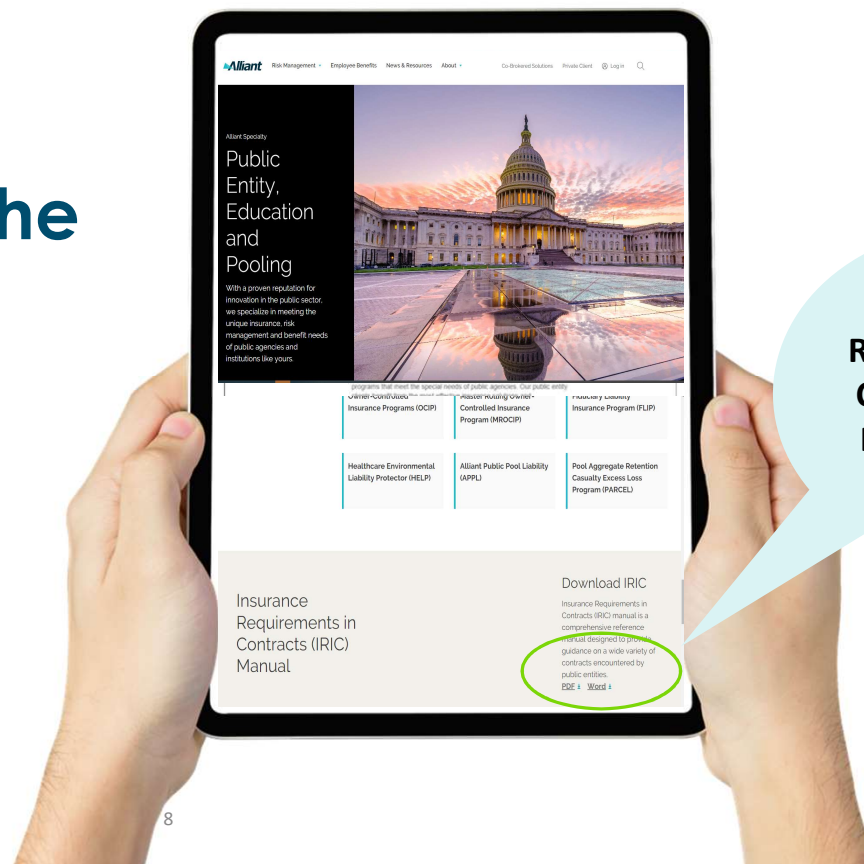
Efficient Processes

Have a process!

- Stick to it
- Document requirements in advance
- Use standard insurance industry language and forms
- Stay current on state of the industry language and forms
- Don't change your standard language without review
 - Legal to review indemnities
 - Insurance advisor on IRIC
- See Bob Marshburn's
 - www.AutomatedInsuranceVerification.com

How to Locate the IRIC Manual

Alliant's Website
or
Google it!



Insurance
Requirements in
Contracts (IRIC)
Download IRIC:
[PDF](#) | [Word](#)

[illegible]



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Links to Pages

Ctrl + Click to
follow link



INTEGRATED INSURANCE & FINANCIAL SERVICES

IRIC VERSION 2021.1

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Insurance Requirements in Contracts

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2021.1 Version

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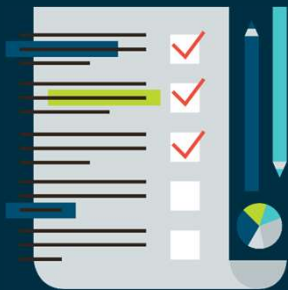
Nine Chapters & Fourteen Exhibits



Insurance Specs For:

1. Most Contracts – Exhibit 1
2. Professional Services
3. Lessees
4. Suppliers and/or Vendors
5. Construction Contracts
6. Environmental Contractors & Consultants
7. Information Technology - Cyber
8. Airports
9. Unmanned Aerial Vehicles (aka Drones)
10. Chartering Aircraft
11. Marine Related Risks
12. Short-term Rentals of Facilities
13. Instructors
14. Schools including Bus & Transportation Costs

Glossary of Terms & Appendices



Foreword

Emerging Trends

Frequently Asked Questions (FAQs)

Introduction – Why Bother?

Contractual Risk Transfer – The Basics

Appendix A

Risk Assessment

Appendix B

Common Insurance Industry Forms

Appendix C

Sample Hold Harmless Agreements

Appendix D

Sample Checklists

Appendix E

Resources

Appendix B

Couldn't resist – favorite IRIC 101 Training exhibit!

2

This notice confirms the provisions of the California Insurance Code, §384. Other states have similar provisions. It states that the policy, not the certificate governs coverage.

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS IS NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES RTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED OR PRODUCER, AND THE CERTIFICATE HOLDER.

Certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION is WAIVED, subject to the terms of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the lieu of such endorsement(s).

PRODUCER

This block identifies the Agent or Broker.

INSURED

The insured is your entity's contractor or lessee.

CONTACT

NAME
(A/C, No. EXT.)
E-MAIL
ADDRESS

FAX
(A/C, No.)

INSURER(S) AFFORDING COVERAGE

NAIC #

INSURER A:

INSURER B:

INSURER C:

INSURER D:

INSURER E:

INSURER F:

The insurer will be identified here. The insurer letter appears again near the left margin at "13" to show which insurer provides which coverage.

COVERAGES

CERTIFICATE NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED. 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.

NEW LTR TYPE OF INSURANCE ADD. ENDORSEMENTS NUMBER POLICY EFF. DATE (MM/DD/YYYY) (MM/DD/YYYY) LIMITS

GENERAL LIABILITY

COMMERCIAL GENERAL LIABILITY
CLAIMS-MADE OCCUR

This notice again states that the policy supersedes the certificate form.

GENERAL AGGREGATE LIMIT APPLIES PER POLICY PRO-PORTION LOC.

AUTOMOBILE LIABILITY

ALL AUTO
ALL OWNED
ALL-OR
HIRED AUTOS

SCHEDULED
AUTOS
NON-OWNED
AUTOS

UMBRELLA LIAB
EXCESS LIAB

CLAIMS-MADE
DED. RETENTIONS

WORKERS COMPENSATION
AND EMPLOYERS LIAB
ANY EMPLOYEE OR PARTNER/EXECUTIVE
OFFICER/OWNER EXCLUDED?
(Mandatory in NH)

Y/N
If yes, detail the scope
of EXEMPTION OF OPERATIONS below

See Schedule

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

Certificate holder is your entity.

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

The authorized representative of the insurer should be an employee, unless the agent or broker is specifically authorized to sign on behalf of the company.

NOTATION. All rights reserved.

ACORD 25 (2010/05)

v.2023 Update

What's Changed?



- › New Limited Wrap Exclusion CG 21 31 with explanation of why contracts should require it rather than the old CG 21 54
- › Updated Additional Insured Charts & Comparison of AI Endorsements
- › Further clarification on **The Myth of “Following Form” Coverage**
- › More detail on Developer Bonds for infrastructure deeded to a municipality
- › Minimum Limits required from Vendors reviewed and increased where appropriate



II. Construction Risks

Are you as protected as you think?

Additional Insured (AI) Endorsements

Based on Insured Relationship to AI

AI Relationship to Insured	No Contract with AI Required (Privity) & Doing Work For AI		Privity & Work For AI	No Privity & No Work For AI
Type of Endorsement	Scheduled	Automatic*	Automatic*	Automatic*
Ongoing Ops Form #	20 10	20 38	20 33	20 42 ⁺ or 20 43
Completed Ops Form #	20 37	20 40	20 39	NONE

* ONLY if required in written contract or agreement

⁺ For Designated Operations

For Automatic Status, Form Numbers 20 38 and 20 40 should be required rather than the 20 33 and 20 39

Use form 20 33 and 20 39 ONLY when you are SURE there are no subs being used that have NO contract "With You"

Construction Risks

Are you as covered as you think?



CG 21 31 12 19 – the first update to the ISO form for “controlled insurance programs” (OCIPS, CCIPS aka “wrap-up”) since 01 96!

- › Solves the problem for unenrolled trades and enrolled trades with offsite exposures
- › The wrap-up exclusion of the CGL only applies to parties enrolled in a wrap-up

Construction Risks

Are you as covered as you think?



**Case law litigation and precedent will determine which of these gaps are truly clarified*

CG 21 31 12 19 – new version aims to provide coverage for some of the gaps involved with Wrap ups, such as*...

- **Completed Operations coverage** after the Wrap is cancelled, expired, or non-renewed
- Coverage for **Construction Defects** as well as Warranty, Maintenance, or Repair work done on a Wrap project in the future *after* the time period covered by the Wrap
- **Property Damage liability coverage** for the Sub to the work of other Contractors
- The Contractor's **CGL coverage for Contractual liability for indemnification** of the Owner/GC, including "Action over" litigation from a Contractor's employee when the Owner/GC is not considered to be the Employer who has protection from the "sole remedy" doctrine of Workers' Compensation and Employer's Liability
- **"Off-site" Coverage**, including Additional Insured Endorsements for the Project Owner

Construction Risks

Are you as covered as you think?



Impact of the Hard Market...

Contractors and especially subs are impacted by hardening market. Responses include:

- › Purchasing lower limits
- › Increasing retentions or using SIR programs
- › Buying less expensive policies with coverage gaps
- › Prior work exclusions
- › Project delays and costly extensions of coverage

= **Need for additional diligence**

Construction Risks

Are you as covered as you think?



Other significant recent changes:

- › **Automatic Additional Insured:** Old CG 2010, 2026 and 2027 required scheduled AI, **new** CG 2033 (ongoing ops) and CG 2039 (completed ops) provide automatic coverage where required in written agreement.
- › **Privity of contract issues:** **newish** CG 2038 (ongoing ops) and CG 2040 (completed ops) solves the problem for downstream contractors not in direct contract with the public entity
- › **Waiver of Subrogation:** **new** CG 2453 provides automatic waiver where required in a written agreement



III. Other Topics

Recent Situations Presented

Temporary or Transitional Housing Solutions

Other Topics



Temporary or Transitional Housing Solutions

- › Hotels, Motels and other housing options contracted to take in unhoused population during COVID and beyond
- › Contracting entity is liable for the tenants – the hotel / motels will not accept liability
- › Issues about unsafe conditions and properties not up to current code
- › Responsibility for damage at end of agreement

Course of Construction

Other Topics



Push by developers / contractors to move property over to the Entity's operational property insurance from builder's risk before project completion.

- Changing from Builder's Risk/Course of Construction coverage form can raise coverage issues, such as:
 - Will Entity make contractor an additional insured and waive subrogation under operations policy?
 - What about damage to Entity's property outside of "the work" that the contractor is building?
 - Are the coverages the same for water damage, earthquake, equipment testing, etc.
 - Differences in Deductibles

Employees moving out of State & WC Coverage

Other Topics



Many Entities are self-insured for workers' compensation coverage individually or through a pool. **The State of CA DIR OSIP Certificate of Consent to Self Insure only authorizes self insurance in CA.**

- Review regulations about state of hire and applicable benefits
- If an employee is determined to fall under the WC benefits of another jurisdiction – evaluate options
 - Multi state coverage available through your pool's reinsurer
 - Stand-alone multi state coverage
 - Note some states have monopoly programs and coverage must be obtained from these states
- Talk to you pool and broker

Emerging School Risks

Other Topics



Schools are vital to the fabric of our communities and are increasingly called upon in new and challenging ways. Recent topics:

- › Student interns – outplacements by K-12 schools and incoming college trainees
- › Boutique transportation providers & compliance with auto liability insurance and background checks
- › Schools as Emergency Response Venues
 - › There is a long history, but recent experiences show how large a role our schools play
 - › Reasonableness of indemnities offered schools
- › School locations as refuges for unhoused, overnight parking
- › Third parties wanting to use schools for community events like street fairs, farmers' markets, etc.

Alternative Risk Financing

Other Topics



The hard market is pushing organizations to alternative risk transfer (ART) to finance risk

- › Evaluating Self-Insurance Programs
 - › Private entities differ from public entities
 - › Willingness to disclose information
 - › Third-party satisfaction of SIR
- › Captive Insurers
- › When your entity is the contractor
 - › Modifying the contract to allow for self-insurance, pooling, captives and other ART techniques

Questions?

Shadi Jalali

Shadi.Jalali@alliant.com

Dan Howell

Daniel.Howell@alliant.com



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Way to Manage Risk

www.alliant.com
specialty@alliant.com





THE

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