You Can’t Always Get What you Want

What you need to know about important changes to Insurance Requirements in Contracts

Presented by:
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CSU Systemwide Risk Management

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Alliant Insurance Services
Presentation Outline

• Indemnification
  – Impact of SB 474
• Insurance Requirements
  – Impact of new ISO 04 13 forms
  – Drafting to fit the need
• Verification of Coverage
• Document Retention Policy & Procedure
• Claims
• Sources of Knowledge
• 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

- 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.
Indemnification – 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 most of the indemnity provisions.
• Start with negotiating Entity’s preferred indemnity language and then move on to the insurance to support the indemnity.
Three Main Types of Indemnification

1. Strict “Type I” Indemnification
   - Contractor indemnifies entity for all claims costs arising from project except entity’s Sole Negligence or willful misconduct.

2. Intermediate “Type II” Form (Construction)
   - Contractor Indemnifies except for entity’s active negligence or willful misconduct

3. Limited “Type III” Form
   - Contractor indemnifies for contractor’s negligence
   - Can be used for cross indemnity comparative negligence

See OGC requirements.
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.
Just Say No?
Where to Draw the Line

• At what point will the Entity be so exposed that the proposed indemnity clause is too risky?

• **Recommendation**: Focus on indemnification before insurance.

• **Recommendation**: Involve Entity’s Risk Management team in negotiations that deviate from approved indemnity language.
Impact of SB 474

• Effective January 1, 2013
• Limits the Public Entity owners to a Type II indemnity by construction contractors – no indemnity for PE’s active negligence or willful misconduct
• Limits general contractors to a Type II indemnity by sub-contractors
• SB 474 prohibits shifting the risk via Type I indemnity agreements
SB 474 Impact Schematic

SB474
Allowable Indemnity Commercial Construction Contracts*

Legend
- Type I, II, III
- Type II, III
- Unknown

* Commercial construction contracts entered into on/after January 1, 2013

1 If Owner is not a builder.

Source: XL Construction Insider, May 2013
Additional Insured Endorsement

- The most preferred insurer endorsement is Insurance Services Office (ISO) Form No. CG 20 10 11 85, covering damages arising from “your work”. 11 85 = rev. date = Nov. 1985.

- Covers both “products and completed operations” (“your work”) as well as “ongoing operations”, with potential to cover your sole negligence as well.

- Newer forms may have to be accepted – rev. dates 10 01, 07 04, or 04 13
• 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
• The 07 04 and 04 13 versions of the forms above eliminate coverage for your sole negligence
ISO 04 13 changes Impact to AI Endorsement

- Provides AI coverage only for contractor’s negligence.
- Sets up potential for conflict of interest between named and additional insureds
  - Insurer will want to show named insured 0% at fault, to eliminate coverage for AI
  - AI will want to show named insured at least 1% at fault, to trigger coverage
  - Conflict could to erode the available limits by paying for AI defense Due to changes in “Insured Contract” definition
ISO 04 13 changes Impact to AI Endorsement (cont.)

• Limits contractual liability coverage to vicarious liability of the indemnitee
• Only provides coverage to the amount of insurance requested.
  – We have added suggested language to the manual that should be reviewed with Entity Counsel
• New CG 20 38 04 13 endorsement is a benefit for handing AI status with subcontractors where there is a written requirement for subs to indemnify owner
THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

<table>
<thead>
<tr>
<th>Name Of Additional Insured Person(s) Or Organization(s)</th>
<th>Location(s) Of Covered Operations</th>
</tr>
</thead>
</table>

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. 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.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to “bodily injury” or “property damage” occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of “your work” out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

C. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or

2. Available under the applicable Limits of Insurance shown in the Declarations; whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.
THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

<table>
<thead>
<tr>
<th>Name Of Additional Insured Person(s) Or Organization(s)</th>
<th>Location And Description Of Completed Operations</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
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Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. 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" 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".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations; whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.
COMMERCIAL GENERAL LIABILITY
CG 20 38 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – AUTOMATIC STATUS FOR OTHER PARTIES WHEN REQUIRED IN WRITTEN CONSTRUCTION AGREEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. Section II – Who Is An Insured is amended to include as an additional insured:
1. Any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy; and
2. Any other person or organization you are required to add as an additional insured under the contract or agreement described in Paragraph 1, above.

Such person(s) or organization(s) is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

a. Your acts or omissions; or
b. The acts or omissions of those acting on your behalf in the performance of your ongoing operations for the additional insured.

However, the insurance afforded to such additional insured described above:

a. Only applies to the extent permitted by law; and
b. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for the person or organization described in Paragraph 1, above are completed.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
   a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
   b. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of, or the failure to render, any professional architectural, engineering or surveying services.

2. "Bodily injury" or "property damage" occurring after:
   a. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

b. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

C. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement described in Paragraph A.1, or

2. Available under the applicable Limits of Insurance shown in the Declarations, whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.
### Additional Insured Endorsement Comparison

<table>
<thead>
<tr>
<th>CG 20 10 ED 07 04</th>
<th>CG 20 10 ED 04 13</th>
<th>Comments</th>
</tr>
</thead>
</table>
| **B. Section II. Who Is An Insured is amended to** | **C. Section II** | 1. Restricts coverage to that required by contract, to the extent permissible by law  
2. Restricts limits of liability to those specified in the contract |
| 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: | **However:** | |
| 1. Your acts or omissions; or | 1. The insurance afforded to such additional insured only applies to the extent permitted by law; and | |
| 2. The acts or omissions of those acting on your behalf; | 2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured. | |
| in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above. | **C. Section II** | |
| **B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:** | **However:** | |
| This insurance does not apply to "bodily injury" or "property damage" occurring after: | **C. With respect to the insurance afforded to these additional insureds, the following is added to** | |
| 1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or | **Section III – Limits Of Insurance:** | |
| 2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project. | If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance: | |
| | 1. Required by the contract or agreement; or | |
| | 2. Available under the applicable Limits of Insurance shown in the Declarations; whichever is less. | |
| | This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations. | |
### Additional Insured Endorsement Comparison (cont.)

<table>
<thead>
<tr>
<th>CG 20 37 ED 07 04</th>
<th>CG 20 37 ED 04 13</th>
<th>Comments</th>
</tr>
</thead>
</table>
| 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" 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". | However:  
1. The insurance afforded to such additional insured only applies to the extent permitted by law; and  
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured. | 1. Restricts coverage to that required by contract, to the extent permissible by law  
2. Restricts limits of liability to those specified in the contract |
| B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:  
If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:  
1. Required by the contract or agreement; or  
2. Available under the applicable Limits of Insurance shown in the Declarations; whichever is less. |  | |
| This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations. |  | |
Proprietary A.I. Endorsements

• Be wary of non ISO / carrier specific endorsements

• Can contain limitations, such as
  ▪ Amended “Duties in the event of occurrence, claim or suit” Condition
Claims-Made Returns

• This situation is starting to occur more frequently and requires some extra steps:
  ▪ Request copy of insurance policy
  ▪ Check Declarations page for Retroactive Date.
    • Some carriers do not provide this which means coverage is only for losses that occur and are reported during the policy year. **Not acceptable.**
  • Check Terms and Conditions for Extended Discovery Coverage Reporting Extension – Again some carriers no longer offer this. **Not acceptable.**
  • For a large project you may need to require that coverage remain in effect for 5 years.
## What is Claims-Made?

<table>
<thead>
<tr>
<th>Limits</th>
<th>Claims Made</th>
<th>Occurrence</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Coverage will respond to incidents arising on or after the policy retroactive date and <em>which are reported during the term of the policy.</em></td>
<td>Coverage will respond to incidents arising from the coverage period - regardless of when those claims are reported.</td>
</tr>
<tr>
<td>Prior Acts or Retroactive Coverage</td>
<td>Policy may be endorsed to respond to incidents which occurred before the policy start date. also referred to as policy retroactive date.</td>
<td><em>No prior acts coverage is needed</em></td>
</tr>
<tr>
<td>Extended Reporting or Tail Coverage</td>
<td>Tail coverage responds to cover incidents that have not been reported to the company during the policy term. Some companies will offer a free tail for 30 days, at retirement, subject to certain conditions. Others charge up to 100% of premium.</td>
<td><em>No tail coverage is needed</em> because incidents that occurred during the policy period are covered no matter how much later they are reported.</td>
</tr>
</tbody>
</table>
What are the solutions?

- Review and redraft standard insurance conditions for all agreements
- Separate indemnity language for construction agreements
- Consider Owner’s Protective Professional Indemnity (OPPI) coverage
  - sits excess of other coverage just for owner
- Consider OCIP or ROCIP
  - New programs can handle smaller projects
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 Entity premises? Site control?
  ▪ **When**? Night? During sporting events?
  ▪ **How** likely would the Entity be a defendant if there is a loss?
The Risk Management Process

- Identify exposures
- Analyze exposures
- Consider feasibility of alternative techniques to treat exposure
  1. Prevention/reduction
  2. Retention
  3. Risk financing
  4. Avoidance
  5. Transfer
- Select the best technique
- Implement technique
- Monitor results and change as needed.
The Basics

• Avoid terms that do not have meaning in the insurance industry

• Request coverage on an “occurrence” basis, except professional liability or pollution liability can be “claims-made.”

• Describe maximum deductibles or self insured retentions

• Require the addition of the Entity, etc. as an additional insured by endorsement to all policies except workers' compensation and professional liability.
The Basics (cont’d)

- Require the other party's insurance be primary
- Require notice of cancellation
- Require an aggregate limit higher than the occurrence limit (note TULIP program has 1x agg.)
- Specify that insurance be placed with insurers that meet an A.M. Best's minimum rating of A:VII
  - Is the carrier strong enough to back the insurance contract that is backing the indemnification language?
  - Management Rating = Letters
  - Financial Size Category = Roman Numerals
  - A “Cut-through” endorsement to a higher rated reinsurer may be used to solve a low rated carrier problem with SORM review.
• Require that the contractor’s insurer waive subrogation against Entity
  ▪ Subrogation is the requirement that the insured transfer rights of recovery to the insurer.
    ▪ i.e., – Insurer pays claim for property damage, seeks recovery from third party – Entity does not want to be that third party!
  ▪ If necessary, only waive Entity’s right to subrogation on property, and even that creates significant exposure.
    ▪ Example claim: The vending machine.
Insurer Ratings – Will they be there to pay the claim?

- Two Main Insurer Rating Agencies
  - Standard & Poor’s
  - A.M. Best

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

+,- These signs following the letter rating indicate the relative position within the class

*Italics represent minimum recommended.*
Best’s Financial Size Category (FSC)

- Reported Capital, Surplus and Conditional Reserve Funds (in Millions)
  - FSC VII  $50 to $100 – Minimum rec.
  - 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.

*US P/C and L/H companies, 1977-2002

How Much Coverage is Enough?

• Guidelines matrix
  ▪ High, Moderate, Low

• Tort costs increased 5.1% in 2010, – 8.7% average annual increase since 1951!
  (Towers Watson’s US Tort Costs: 2011 Update)
  $1 million in 1986 is over $4 million today with PV based on COLA
  $1 million in 1986 is over $9 million today with PV based on tort inflation

• Jury verdicts continue to rise
  ▪ (See www.iii.org)

• Analyze the Exposure
• Maximum Possible vs. Maximum Probable Loss
**Alliant Insurance Requirements in Contracts**

Edition: May 2011 Version 7.0

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**Project Name/Purchase**

Check One:  
- [ ] Construction  
- [ ] Services (specify)  
- [ ] Purchase  
- [ ] Lease (specify)

**BEST Secure Ratings**

<table>
<thead>
<tr>
<th>Superior</th>
<th>A++</th>
<th>A+</th>
<th>Excellent</th>
<th>A</th>
<th>A–</th>
<th>Very Good</th>
<th>B++</th>
<th>B+</th>
</tr>
</thead>
</table>

**BEST Financial Size Categories**

<table>
<thead>
<tr>
<th>Class XI – XV</th>
<th>Class VII – X</th>
<th>Class I – VI</th>
</tr>
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</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>
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<tbody>
<tr>
<td>CGL</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>
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<td>$1 million</td>
<td>$500,000</td>
<td>$250,000</td>
<td></td>
<td></td>
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<tr>
<td>WC and EL</td>
<td>Occurrence</td>
<td>$1 million</td>
<td>Statutory Limits</td>
<td></td>
<td></td>
<td></td>
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</tbody>
</table>

**Option for sole proprietors and excluded employees**

Health Ins: Employment related injuries not excluded  
Disability: Comparable to Statutory limits

<table>
<thead>
<tr>
<th>CC/BR Property</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>
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<tbody>
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<td>E&amp;O/PL Occurrence</td>
<td>$10 million</td>
<td>$5 million</td>
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<td>$250,000</td>
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<td>$1 million</td>
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<td>$250,000</td>
<td></td>
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<tr>
<td>Pollution Occurrence</td>
<td>$10 million</td>
<td>$5 million</td>
<td>$1 million</td>
<td>$500,000</td>
<td>$250,000</td>
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<td>$500,000</td>
<td>$250,000</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| *Claims Made | 5 year tail | 3 year tail | 1 year tail |

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Indicate approved amount unless recommended coverage is not applicable

**Recommendation**  
**Date**

**Approval**  
**Project Manager/Purchasing Agent**  
**Date**

**Director Facilities Planning/Director Support Services**

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*33*
Many organizations are moving to alternative Risk Financing Vehicles

Self Insurance
- Workers’ Compensation – regulated stand alone, and Self Insured Groups
- Liability – not regulated
  - High self insured retention
  - Risk Retention Groups
  - Captive Insurance Company

How does one evaluate these ART Vehicles?
Bid Situations

• Would your Entity 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.
When Entity is the Contractor

• Role Reversal
• Can the Entity comply with the Insurance Requirements?
  – Entity’s programs may have significant elements of self-insurance and pooling that is not traditional insurance
  – Pools issue “certificates of coverage” not “certificates of insurance.”
  – The Entity should include agreement language that allows for self-insurance and/or pool participation
Verification of Coverage

• Having a Process
  ▪ What is your threshold for obtaining certificates, vs. policies vs. endorsements?
  ▪ How do you determine the appropriate coverages and limits?
  ▪ How do you determine and respond to non-compliance? *Will the job be delayed or halted? Leverage after commencement?*

• Using the Process
  ▪ HDIKT – How do I know that… an audit trail documenting compliance

• Get Involved Early
• Sample Certificate
• Sample Checklist
### Contract Review Checklist

#### HOLD HARMLESS / INDEMNIFICATION REVIEW

1. **Contract Date/Party:**
   - [ ] Party(A) Accepting Risk
   - [ ] Party(B) Accepting Risk

2. **Type of Risk Accepted:**
   - [ ] Indemnity
   - [ ] Other

3. **Breach of Risk Accepted:**
   - [ ] Breach
   - [ ] Indemnity

4. **Nature of Damage/Injury Accepted:**
   - [ ] Property
   - [ ] Injury
   - [ ] Other

5. **Property Damage:**
   - [ ] Our property
   - [ ] Other party's property
   - [ ] Property of third persons

6. **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.

1. **Liability Insurance**
   - a. Is it required?
   - b. Limits of Liability
   - c. Special coverage required
   - d. Occurrence vs. Claims made coverage
   - e. Named as additional insured
   - f. Cross liability
   - g. Contractual terms required
   - h. Cancellation notice
   - i. Certificate of other evidence
   - j. Other:

2. **Workers’ Compensation**
   - a. Is it required?
   - b. Contractor’s employees / Borrowed servants
   - c. Waiver of subrogation
   - d. Federal acts
   - e. All claims and employers’ stop gap
   - f. Cancellation notice
   - g. Certificate of other evidence
   - h. Other:

3. **Property Insurance**
   - a. Is it required?
   - b. Valuation method required
   - c. Additional named insured / Additional insured
   - d. Waiver of subrogation
   - e. Cancellation notice
   - f. Certificate of other evidence
   - g. Other:

4. **Automobile Liability Insurance**
   - a. Is it required?
   - b. Valuation method required
   - c. Additional named insured / Additional insured
   - d. Waiver of subrogation
   - e. Cancellation notice
   - f. Certificate of other evidence
   - g. Other:
• Your Certificates & Endorsements are your insurance policy.
• How long does your Entity keep its own insurance policies?
• Alternative storage methods.
Claims

• Responding to Loss Events
• Reporting to Contractor’s Insurers
• The Subcontractor’s Subcontractor
  ▪ Chasing Certificates and Endorsements
  ▪ Special Situations (such as Underwater Construction, Asbestos Removal, Blasting).
  ▪ The benefit of new ISO 20 38 form
• Negotiating Your Coverage
Sources of Knowledge

• Peer group
• Your Insurance Providers
  – JPA Administration team
  – Insurance brokers
  – Legal Counsel
• The risk management community
  ▪ PARMA, PRIMA, AGRIP
  ▪ Manuals - IRMI, Alliant IRIC, etc.
  ▪ Developing a library based on experience

Odds are, this is not the first time the issue has come up – no need to reinvent the wheel!
Sources of Knowledge

INSURANCE REQUIREMENTS IN CONTRACTS
A PROCEDURE MANUAL

The latest version
YOU CAN’T ALWAYS GET WHAT YOU WANT......

.... BUT IF YOU TRY MOST TIMES YOU’LL GET WHAT YOU NEED
QUESTIONS