



The preferred Insurance agents for Environmental firms

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Liability Exposure from the Insurance Side:

- Are all policies the same? Policy Forms & Edits
- Contracts - chains for life...
- Whose policy is it any way? The Dangers of Additional Insureds
- You go first... No, I insist: Primary Insurance and Contributing Insurance
- Can I get my money back? Waiver of Subrogation
- This really happened: Claims Experience

- Policy Forms:
 - General Liability
 - BI
 - PD
 - Arising out of the insured operations.
 - Ocurring during the policy period.
 - Professional Liability
 - Errors
 - Omissions
 - Failure to provide services
 - Claim filed during the policy period
 - Retroactive or knowledge date.

Are all
policies the
same? Policy
Forms &
Common
Terms

Are all policies the same? Policy Forms & Common Terms

Pollution Liability

- Intentional Acts
- Design
- Unintentional
- May be claims made or occurrence form

Limits

- Per claim
 - May have sublimits for specific coverages.
 - Can have separate deductibles.
- Policy Aggregate
 - Per policy period
 - For all claims
- Deductible
 - Dollar one defense
 - Per claim or policy aggregate.
- Retention
 - Separate deductible that may trigger between layers of coverage
 - Hidden cost to umbrella

Are all policies the same? Policy Forms & Common Terms



Claim

Occurrence

Written notice

Loss defined as BI, PD or failure of service (E&O)



Negligence

Simple Negligence

Gross Negligence

Vicarious Negligence

Contractual obligation



Indemnification

Loss must be measurable and have occurred.

Insured must become legally obligated to pay

Must occur during the covered period.

Contracts - chains for life...

- The biggest secret ever: They don't want you to think you can red-line it.
- YOU HAVE TO.
- Send it back and initial each change
- If they don't accept your changes, do you really need that job?
- The bigger the firm, the less they care about your liability.

Contracts - chains for life...

- Contractual liability is liability that arises from written agreement as opposed to organically resulting from operations.
 - Keep it simple: I should be responsible when I break things, you should be responsible when you break things.
 - Complex job sites blur the lines on responsibility.
 - Sometimes at a jobsite, a supervisor from one firm can direct employees from another. Insurance carriers hate this.
 - A contract is needed to sort this out and lay blame.
- Contractual liability may or *MAY NOT* be covered on your current policy without endorsement.
 - General Liability can be written with standard limited contractual liability.
 - Broadening endorsements can expand the coverage and protect you from the risks you agree to.
 - It is up to YOU to know what is reasonable and not reasonable - or hire an attorney to help you understand the difference.

Contracts - chains for life...

- Contractual liability that is unlawful, or could never exist in the absence of a contract is NOT covered.
 - Your policy will not accommodate coverages and obligations that don't exist in settled law.
 - Your policy will not respond to the loss of a party without insurable interest.
- Contractual liability can extend beyond the life of the contract.
 - Common terms including maintaining LIMITS for three years.
 - Dropping an Umbrella can result in breach
 - Much of this is unenforceable.
- Breach of contractual liability is not necessarily insurable.

Whose policy is it any way? The Dangers of Additional Insureds

- Your policy is based on your operations, revenue and exposures.
 - If a small engineering firm is contracted to a fortune 500 company, the risk profile grows to meet the size of the customer.
 - The larger the client, the more likely the lawsuit.
 - A firm with a disproportionate mix of clients (1 large, many small) is more at risk than a balanced firm.
- Adding additional insureds to the policy is not automatic. It must occur according to the rules of the policy or it is not valid.
 - By contract
 - As property owner or manager
 - Specifically named and endorsed (most dangerous)
- Adding named insureds gives them full rights and privileges to every element of the policy.
 - You don't decide when they can file a claim, they do.
 - They can leave their carrier out of it, even if they are partially responsible.

Whose policy is it any way? The Dangers of Additional Insureds

- Your carrier doesn't like naming AI but recognizes you will be pulled into these relationships.
 - They will want to know the types of contracts
 - The size of the contracts.
 - The length of time for the work
 - The amount of payroll.
- Additional Insured status should only last as long as the work provided. Efforts must be made to immediately remove all Ais that are no longer valid.

Whose policy is it any way? The Dangers of Additional Insureds

- REMEMBER you don't have to break anything but 5 AIs could create claims all at once.
 - Your policy has an aggregate
 - Is claim defense within the limit or additional
 - Carrier has the right to defend or settle without your input.
- AI status can result in your policy being non-renewed.
 - Large companies regularly uses smaller entities to carry their risk
 - One large claim - even through vicarious liability can make a firm uninsurable.

- But, I thought I had a million? Dilution of Limits
- How many AI obligations do you have?
 - Do you have a revenue threshold
 - When are the obligations about to sink the firm
- Umbrella can provide additional aggregate
 - Add bottom versus top
 - Add more per-claim GL
- Is \$1million enough any more
- TWO attitudes for lawsuits:
 - Have enough limit to survive
 - Give 'em the minimum and run off to Mexico

Whose policy is it any way? The
Dangers of Additional Insureds

You go first... No, I insist: Primary Insurance and Contributing Insurance

- Stacking limits in lawsuits
- Primary responders
 - Contractually obligated
 - Single event-single contractor situations
- Contributing and excess insurance
 - Project Manager exclusion
 - Contractors special conditions limitation on Excess Liability
- Umbrella and the follow-form dilemma
 - Certificates versus actual coverage
 - Carriers reluctance to pay until exhaustion

Can I get my money back? Waiver of Subrogation

- Subrogation: The ability of the insurer to recoup losses by recovery from the property owner or party with ultimate liability.
 - Occurs without permission
 - Common horse-trading that occurs within the insurance industry
 - Can impact loss history and insurability without the opportunity for defense.
- Waiver: written notice to the carrier that waives the rights of the insured, and therefore the carrier, to recover these losses.
 - Maintains the total loss to a single party.
 - Desirable if you are not on the bottom of the liability chain.

Can I get my money back? Waiver of Subrogation



Blanket Waiver endorsements

Allowable when required in a written contract

Available as a scheduled and named waiver (most risk)



Limitation by policy type

General Liability usually requires an additional premium

Professional Liability (typically unavailable due to sole negligence)

Workers Compensation (state rules vary)