

Coverage Options Worth Exploring

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Given today's litigious climate and certain court decisions, members of the construction industry should carefully research and weigh all insurance options before acquiring the necessary insurance coverages. CGL policies, which provide for a broad range of risks and exposures, provide coverage for commercial property owners and general contractors who face loss exposures such as vicarious liability and supervision of an independent contractor's work, but there are also other coverage options a property owner or general contractor might find worth exploring.

Vicarious liability is a legal responsibility that occurs when one party is held liable for the actions of a subordinate or an associate because of the relationship between the two parties. There are many situations in which a property owner or a general contractor (the "principal") can be held vicariously liable for injury to others resulting from the negligence of its independent contractor during a construction project. In addition, the principal can also be held directly liable for injury to others that results from the principal's alleged failure to properly supervise its independent contractor's work. Some principals see greater benefit in transferring the cost of insuring these types of loss exposures to the contractor.

Three common options a principal may consider for coverage protection are:

- (1) Requiring the independent contractor to purchase an owners and contractors protective (OCP) liability insurance policy listing the principal as the named insured.

- (2) Requiring the contractor to add the principal as an additional insured under the contractor's CGL policy.
- (3) Using a hold-harmless agreement to transfer the financial consequences of liability claims to a contractor that is working on the project. The advantages and disadvantages of each should be considered by the owner when making insurance decisions.

OCP liability insurance, provided by using ISO form CG 00 09, is typically a separate, monoline policy, purchased by an independent contractor, that lists the principal as the named insured. OCP coverage can be purchased by a general contractor to protect the building owner, or by a subcontractor to protect a general contractor. An OCP policy does not protect the "designated contractor" who actually purchases the policy.

OCP policies only cover operations performed for the named insured by the designated contractor at the location specified in the policy. When the work is completed, the coverage under the OCP policy ends. OCP coverage is primary insurance, and the project owner's OCP coverage will pay before the owner's own CGL policy, if any.

The property owner could also ask to be added to the contractor's CGL policy as an additional insured, which is accomplished by adding an endorsement to the contractor's policy that designates the property owner as an insured. Similarly, a general contractor can be

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named as an additional insured under a subcontractor's CGL policy. There are a number of additional insured endorsements available, although in 2004, Insurance Services Office Inc. (ISO) added more restrictive language to the CGL endorsements that deal with construction-related risks.

Endorsement CG 20 10 is commonly used for naming property owners, lessees, or contractors as additional insureds under the CGL policies of organizations that are entering into contracts with any of those parties. A listed person or organization is an additional insured for liability for "bodily injury," "property damage," or "personal and advertising injury" caused, in whole or in part, by the acts or omissions of those (such as the named insured's subcontractors) acting on the named insured's behalf. The location of the operations must be designated in the endorsement's schedule in order for the named person or organization to be an additional insured for those operations.

The policy limits are available to the named insured and all those listed as additional insureds for the duration of the policy period, but a notice of changes to the policy is sent to the named insured only.

The third option a property owner may consider is negotiating terms of a hold-harmless or Indemnity agreement, which is a contract provision in which one party agrees to indemnify another. This type of agreement can be used to transfer the financial consequences of liability loss exposures from one party to another.

Hold-harmless agreements are not always enforceable, and in some states statutory or common law prohibits one party from assuming another party's liability in certain situations. When hold-harmless agreements are enforceable, the party assuming another's liability can insure itself for this obligation by making sure its CGL policy includes open-ended contractual liability coverage.

In many instances, insurers restrict contractual liability coverage under the CGL to a few specified types of "incidental contracts" (such as leases and elevator maintenance agreements) that do not include construction contracts, using the Contractual Liability Limitation Endorsement (CG 21 39). Any firm accepting contractual liability under a construction agreement must make sure that this endorsement has not been added to its CGL policy.

The insurance needs of property owners and contractors can be very complicated, and all options should be carefully reviewed. It is important for a property owner or general contractor to understand the nature and scope of all coverages offered, exclusions applied, and any potential problems or pitfalls. ■