



Wall Templeton
ATTORNEYS

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WHAT TO DO WHEN CONSTRUCTION PROJECTS GO BAD

INSURANCE TYPES AND PROTECTIONS

GRAHAM P. POWELL
DECEMBER 9, 2008

Types of Insurance

- Errors and Omissions
- Builder's Risk
- Commercial General Liability
- Worker's Compensation
- Automobile

Errors and Omissions

- For architects, engineers, anyone with design responsibility
- Many design professionals do not carry
 - High deductible
 - High premium
- Usually have a declining balance
- Not for breach of contract, for breach of standard of care

Builders Risk

Theft of materials and damages and repairs to the property and building under construction

What Does Builder's Risk Cover?

Example: Lumber on a project that is halfway complete is stolen over night.

Example: Hurricane damages project that is halfway complete.

KNOW YOUR POLICY and what it covers

NOT Covered by Builder's Risk

- Faulty Workmanship
- Design Defects
- Earth Movement

COMMERCIAL GENERAL LIABILITY

The three basic coverage areas of a CGL policy are property damage, bodily injury, and personal and advertising injury.

“Occurrence” and “Accident”

Coverage only where there is an “occurrence”

“Occurrence” only where there is an “accident”

Auto Owners Insurance Company, Inc. v. Newman

GENERAL CONTRACTOR CHECKLIST FOR LIABILITY CLAIMS

Have a written contract with each subcontractor requiring that the subcontractor indemnify the general contractor.

Require that subcontractors name you as an “Additional Insured” on their policies (CGL and umbrella).

Require that the “Additional Insured” coverage be primary and non-contributory.

Obtain Certificates of Insurance.

ADDITIONAL INSURED

An individual or entity that is not automatically included as an insured under the policy of another, but for whom the named insured's policy provides a certain degree of protection. An endorsement is typically required to effect additional insured status. The named insured's impetus for providing additional insured status is normally contractual.

ADDITIONAL INSURED

**“IT DEPENDS ON THE
LANGUAGE OF THE
ENDORSEMENT”**

WHAT TO LOOK FOR IN CERTIFICATES OF INSURANCE

Why is it being provided?

“Because I was asked to have it issued”

“The contract requires it”

“My attorney requested it”

“Their attorney said he needs it”

WHAT TO LOOK FOR IN CERTIFICATES OF INSURANCE

CONTRACT VERSUS INSURANCE CONTRACT DISCONNECT:

**“HOLD HARMLESS FOR ANY AND ALL CLAIMS”
VERSUS TERMS AND CONDITIONS OF
INSURANCE CONTRACT**

WHAT TO LOOK FOR IN CERTIFICATES OF INSURANCE

- Name of Insurer
- Insurance Agency
- Named Insured
- Types of Insurance
- Policy Numbers
- Effective Dates
- Cancellation Procedure
- Additional Insured
- Authorized representative of Insured

WHAT TO LOOK FOR IN CERTIFICATES OF INSURANCE

If not received, notice should be given for compliance before work commences or materials delivered.

Request should be in writing specifying a time period for compliance within the time specified by the contract or within some other specified time.

NOTICES AND DEFENSE TENDERS

CGL POLICY GENERALLY PROVIDES TWO TYPES OF BENEFITS TO INSUREDS:

- (1) DEFENSE FOR POTENTIALLY COVERED
LAWSUITS**
- (2) INDEMNIFICATION FOR JUDGMENTS AND
SETTLEMENTS COVERED BY THE POLICY**

NOTICES AND DEFENSE TENDERS

**INSURED FAILS TO TENDER/TIMELY TENDER:
FORGOT THEY HAD POLICY
FORGOT GENERALLY
BELIEF THAT LAWSUIT LACKS MERIT**

NOTICES AND DEFENSE TENDERS

RESULTS

VOIDED COVERAGE

PRE-TENDER COST ISSUES

NOTICES AND DEFENSE TENDERS

2. Duties in the Event of Occurrence, Offense, Claim or Suit.

You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim.

If a claim is made or "suit" is brought against any insured, you must:

*** (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

You and any other involved insured must:

(1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";

No insureds will, except at their own cost, voluntarily make a payment, assume any obligation, or incur an expense, other than for first aid, without our consent.

NOTICES AND DEFENSE TENDERS

OCCURRENCE V. CLAIMS MADE POLICIES

NOTICES AND DEFENSE TENDERS

POST TENDER CONSIDERATIONS

INSURER CONTROLS DEFENSE

INSURED'S COOPERATION IS REQUIRED

INSURED'S CONSENT TO SETTLEMENT WITHIN POLICY LIMITS IS NOT REQUIRED

INSURER HAS DUTY OF GOOD FAITH TO SETTLE WITHIN POLICY LIMITS IF IT HAS THE OPPORTUNITY AND POTENTIALLY SUBJECT TO BAD FAITH IF IT FAILS TO SETTLE WITHIN POLICY LIMITS AND THERE IS A VERDICT IN EXCESS OF POLICY LIMITS

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