Contractual Risk Transfer 201

AKA, A Deeper Dive; the ins and outs of Effective Risk Transfer!

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Creating Effective Contracts

- How to identify our contract inventory
- Creating form agreements
- Indemnification Clauses
- Shared resource agreements
- Insurance Requirements Templates
- Overview of Insurance Industry Forms and Endorsements
- Practical Exercise
- Implementing a Risk Transfer Policy/Program
- Questions

Case Study

Paralyzed diver wins $28 million judgment / Walnut Creek held liable for pool accident!



Creating Effective Contracts

- How to identify types of agreements your agency should create!

Agreement / Contract Types

- CONSULTANT AGREEMENTS
- CONTRACT FOR SERVICES
- PURCHASE AGREEMENTS
- SPECIAL USE AGREEMENT
- ENCROACHMENT AGREEMENTS
- PUBLIC WORKS CONTRACTS
- HEALTH SERVICES AGREEMENTS
- PUBLIC WORKS/CONSTRUCTION PROJECTS
- LABOR AGREEMENTS
- PURCHASE ORDERS
- PROFESSIONAL SERVICES CONTRACTS
- LEGAL AGREEMENTS/MEDICAL SERVICES
- ETC., ETC., ETC.!!!!!

Types of Agreements

- Should be obvious
- Extract from Accounts payable/Risk Management Files
- Contract management systems
- Contact departments and request types of agreements both short term and long term

Types of Agreements Construction Agreement– Major/Minor

- Construction Agreements
- General Liability
  - Additional Insured Endorsement/Contract Trigger
  - Primary and non-contributory
  - 30 day written notice
  - AM Best Rating
  - Waiver of Subrogation
  - Aggregate limits applied to this contract
  - Admitted Paper
  - Underground exposures/pollution
  - Limitation of Self-Insured Retention/Agency Approval
  - Ongoing Operations
  - Completed Operations

Types of Agreements

Construction Agreements

- Auto Liability
  - Owned and Non-Owned
- Builders Risk
  - Valued at Construction Cost
  - Owned and Non-Owned
- Worker's Compensation
  - Statutory Limits
  - Waiver of Subrogation
  - Employers Liability

Types of Agreements

Construction Agreements

- Other Coverages
  - Aircraft Coverage
  - Cyber Exposures

Types of Agreements

- Professional Services/Consultant Agreements
- Type 1 or 2 Indemnity Agreement
- If allowed by statute

Types of Agreements

Professional Services/ Consultant Agreements

- General Liability-If exposures exist
- Additional Insured Endorsement/Contract Trigger
- Primary and non-contributory
- Admitted Paper
- 30 day written notice
- AM Best Rating
- Waiver of Subrogation

Types of Agreements

- Professional Services/Consultant Agreements (continued)
  - Auto Liability (if required)
    - Owned and Non-Owned
  - Worker's Compensation (if required)
    - Waiver of Subrogation
    - Statutory Limits
    - Employers Liability
  - Professional Liability/Errors and Omissions

Types of Agreements

- Shared Services Agreements
- Mutual Aid Agreements
- Shared Resources Agreements
  - Police
  - Fire
  - Public Works
- Shared Facility Agreements
  - Swimming Pools
  - Sports Fields
  - Recreation Facilities/Gymnasiums/Arenas

Types of Agreements

Shared Services Agreements

- Type 3 Indemnity Clause
  - General Liability
  - Auto Liability
  - Property Insurance/Improvements
  - Worker's Compensation
  - Errors and Omissions

Shared Servies Agreements

- What are the implications of using a mutual hold harmless clause?
  - Clearly define the liability of each party
  - Discussion of Law Enforcement Agreements (State Statutes)

evident

Types of Agreements

- Purchase Orders
  - Type 2 Hold Harmless
  - Insurance Requirements/Based on Exposures
  - General Liability
  - Auto
  - Worker’s Compensation

Insurance Language

Effect of Insurance. Acceptance of the insurance required by this Agreement shall not relieve CONTRACTOR from liability under this provision. This provision shall apply to all claims for damages related to CONTRACTOR’s performance hereunder, regardless of whether any insurance is applicable or not. The insurance policy limits set forth herein shall not act as a limitation upon the amount of indemnification or defense to be provided hereunder

Creating Effective Contracts

- Indemnity Agreements

Indemnity Types

- Type 1/Broad
- Type 2/Intermediate
- Type 3/Limited
- Mutual Indemnification Agreement

Indemnity Type 1 (Broad Form)

The Contractor agrees to save the Public Agency free and harmless of and from any loss or liability, of any nature whatsoever arising out of or in any way connected with the contractor's performance of this Agreement, including loss or liability caused by the Public Agency active negligence, except loss or liability caused by the Public Agency's sole willful conduct or active negligence.

SB 474

SB474—effective 1-1-2013

Type 1 indemnity-for contracts with Public Entity construction related contracts will be in violation of law effective 1-1-2012

Indemnification: Recommended Language Type 2

Hold Harmless, Defense and Indemnification. CONTRACTOR shall hold harmless, defend and indemnify COUNTY and its agents, officers, officials, employees and volunteers from and against any and all claims, demands, losses, damages and liabilities of any kind or nature, including, without limitation, attorney's fees and other costs of litigation, arising out of, or in connection with, CONTRACTOR's negligent performance of, or failure to comply with, any of the duties and/or obligations contained herein, except such loss or damage which was caused by the sole negligence or willful misconduct of COUNTY.

Indemnity Type 2 (Intermediate Form)

A typical Type II clause is as follows:

The Contractor agrees to save the Public Agency’s free and harmless of and from any loss or liability except that caused solely by the Public Agency’s negligence of any nature whatsoever.

Indemnity Type 3 (Limited Form)

Type 3.

A Type 3 indemnity agreement provides that the indemnitor will indemnify the indemnitee for liabilities caused solely by the indemnitor's negligence. If there is any negligence on the part of the indemnitee or any third party, whether "active" or "passive," it will bar any claim against the indemnitor, even if negligent conduct by the indemnitor contributed to the loss.

Indemnity Code Section Examples

Creation of indemnity agreements.

Code sections 2772-2779 provide rules re 2772. Indemnity is a contract by which one engages to save another from a legal consequence of the conduct of one of the parties, or of some other person.

- 2773. An agreement to indemnify a person against an act thereafter to be done, is void, if the act be known by such person at the time of doing it to be unlawful.

Anti-Indemnity Rules Affecting Public Agencies

- Civil Code section 2782 - no indemnity for active negligence on public agency construction contracts
- Civil Code section 2783 - what is construction under the statute
- Civil Code section 2782.05 - subcontractors
- Civil Code section 2782.2 – engineers, inspection services
- Civil Code section 2782.6 – engineers and geologists
- Civil Code section 2782.8 – design professionals

Example
Language by a County

For professional services provided under this agreement, Contractor shall indemnify, defend, and hold harmless County, its elected officials, officers, employees, agents, and volunteers from and against any and all claims, demands, actions, losses, liabilities, damage, and costs, including reasonable attorneys' fees and other costs of litigation, arising out of or in connection with the Contractor's negligent performance of, or failure to comply with, any of the duties and/or obligations contained herein, except such loss or damage which was caused by the sole negligence or willful misconduct of the County.

Indemnification: Recommended Language

Hold Harmless, Defense and Indemnification. CONTRACTOR shall hold harmless, defend and indemnify COUNTY and its agents, officers, officials, employees and volunteers from and against any and all claims, demands, losses, damages and liabilities of any kind or nature, including, without limitation, attorney's fees and other costs of litigation, arising out of, or in connection with, CONTRACTOR's negligent performance of, or failure to comply with, any of the duties and/or obligations contained herein, except such loss or damage which was caused by the sole negligence or willful misconduct of COUNTY.

Example Language for Design Professional

In connection with the performance of the design professional services required hereunder, CONSULTANT shall, to the fullest extent permitted by law, and in accordance with California Civil Code Section 2782.8, indemnify, defend and hold harmless COUNTY, and its agents, officers, officials, employees and volunteers, from any claim, liability, loss, injury or damage (referred to collectively as "Litigation") that arises out of, pertains to, relates to, or is connected with, performance of this Agreement due to the negligence, recklessness or willful misconduct of CONSULTANT and/or its agents, employees or subconsultants. CONSULTANT shall reimburse COUNTY for all costs, attorneys' fees, expenses and liabilities incurred with respect to any Litigation in which CONSULTANT is obligated to indemnify and defend COUNTY under this Agreement.

County Language for Non-Design Professional

In connection with the performance of the non-design professional services required hereunder, if any, CONSULTANT shall hold harmless, defend and indemnify COUNTY and its officers, officials, employees and volunteers from and against any and all liability, loss, damage, expense and costs of any kind or nature, including, without limitation, costs and fees of Litigation, arising out of, or in connection with, CONSULTANT's performance of, or failure to comply with, any of its obligations contained in this Agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of COUNTY. CONSULTANT shall reimburse COUNTY for all costs, attorneys' fees, expenses and liabilities incurred with respect to any Litigation in which CONSULTANT is obligated to indemnify and defend COUNTY under this Agreement.

Shared Servies Agreements

- What are the implications of using a mutual hold harmless clause?

Mutual Hold Harmless

- Mutual Aid Agreements
- Shared Resources Agreements
- Shared Facility Agreements
  - Swimming Pools
  - Sports Fields
  - Recreation Facilities/Gymnasiums/Arenas

Shared Servies Agreements

- Indemnification. Alaska and County will each indemnify, defend and hold harmless the other party and their respective officers, directors, employees, agents and representatives from and against any and all third party claims or causes of actions arising out of, under or in connection with (i) bodily or other personal injury to, or death of, any person, or (ii) damage to or destruction of any tangible property, in each case resulting from, or arising out of, under or in connection with the negligence or willful misconduct of the indemnitor.

RT 201 Work Project

Insurance

- Insurance Industry Forms and Endorsements

California Joint Powers Risk Management Authority - Contractual Risk Transfer Limits									
Type of Agreement	**General Liability Occur/Aggregate**	**Auto Liability**	**Workers' Comp.**	**Errors & Omissions**	**Builder's Risk**	**Pollution Liability**	**Professional Liability**	**Bonds**	**Cyber Coverage**
Aircraft Operations **	2/4	10 (Aircraft)	(Statutory)						
Airport Facility Lease	2/4	2	(Statutory)			1 (fueling)			
Airport FBO Agreement	2/4	2	(Statutory)			1 (fueling)			
Construction Contract Minor	2/4	1	(Statutory)		Bldg. Value			X	
Construction Projects-Major *	5/10	5	(Statutory)		Bldg. Value	2		X	
Consultant Agreement	1/2	1	(Statutory)	1					
Design Professional (Architect/Engineers/etc.)	2/4	1	(Statutory)				2		
Encroachment Permits - Major	3/6	2	(Statutory)						
Encroachment Permits - Minor	1/2	1	(Statutory)						
Environmental services	3/6	2	(Statutory)	2		2	2		
Explosives/Tunneling	10	5	(Statutory)					X	
IT Service (software)	1/2		(Statutory)	1					1
Land Surveyor Agreement	2/4	2	(Statutory)	1			1		
Lease Agreement	2/4	1	(Statutory)						
Lease Agreement/food operations	3/6	1	(Statutory)						
Petroleum/Propane/fuel provider	5/10	5	(Statutory)			5			
Professional service agreements (doctors, lawyers, accountants, etc.)	2/4	1	(Statutory)	2			2		1 (IT/Software Related)
Purchase Order Materials	2/4	1	(Statutory)						

Additional Insured Evolution

- Prior to 2004, the ISO additional insured endorsements Additional Insured—Owners Lessees or Contractors (Form B) (20 10 11 85) and Additional Insured—Owners Lessees or Contractors—Scheduled Person or Organization (20 10 10 01) contained a broad "arising out of" the named insured's work or operations trigger; providing in pertinent part respectively as follows.

20 10 11 85 Language as follows:

WHO IS AN INSURED is amended to include as an insured the person shown in the schedule but only with respect liability arising out of 'your work' (emphasis added) for that insured.…

WHO IS AN INSURED is amended to include the person shown in the schedule but only with respect to liability arising out of your operations….

2004 new AI Endorsement 20 10 04 13

Who is An Insured is amended to include as an additional insured the persons shown in the Schedule but only with respect to liability for bodily injury and property damage caused, in whole or in part, by your acts or omissions …

Coverage Interpretations

After the 2004 introduction of the 07 04 edition AI endorsements, insurers and policyholders interpretations of "caused, in whole or in part, by your" work, operations, or acts or omissions varied widely resulting in disparate case law until 2017 when New York's high court clarified the meaning of ISO policy language in Burlington Ins. Co. v. NYC Transit Auth., 29 N.Y.3d 313, 79 N.E.3d 477 (2017).

Burlington Insurance Company vs NYC Transit Authority

- No Cover if AI is solely negligent
- The AI can still insure away up to 99 percent of its negligence where the named insured was the proximate cause of the loss.
- Proximate cause may be evidenced by the named insured's negligence but also its "actionable deeds’”
- Foreseeability, including prior notice of the dangerous condition or method of work to the named insured, can be decisive in establishing proximate cause.
- AI coverage may not be reduced by the named insured or putative AI's percentage of negligence.
- AI coverage is not restricted to the vicarious liability of the putative AI.

Insurance Companies Position

- AI coverage is premature
- Requires a jury determination
- Position baseless as a matter of law

AI Endorsements, “Other Insurance” and “Primary Language”

Schools Excess Liability Fund v. Westchester Ins. Co. (2004) 117 Cal.App.4th 1275

(pooled self-insurance coverage is not “other insurance” for OI clause).

ISO Forms

- CG 20 10, Additional Insured--Owners, Lessees or Contractors-- Scheduled Person or Organization
- CG 20 01, Primary and Noncontributory--Other Insurance Condition
- CG 20 12, Additional Insured--State or Governmental Agency or Subdivision or Political Subdivision--Permits or Authorizations
- CG 20 13, Additional Insured--State or Governmental Agency or Subdivision or Political Subdivision--Permits or Authorizations Relating to Premises

PROPER INSURANCE REQUIREMENTS

AVERY VS. CITY OF ROSEVILLE & MV TRANSPORTATION

- Record Jury Verdict In Placer County
- Proving up the nature and extent of the damages as well as liability against the transportation service were key components of the action. This matter was tried with Christopher Wood, a partner in the firm. The pretrial offer was $2 million.
- Roger A. Dreyer and Chris Wood obtain $6.4 million verdict in Placer County for brain injury that resulted from Mr. Avery being dropped between four and six feet off of a wheelchair lift onto his head. This is the largest personal injury verdict in Placer County history.

POLICY NUMBER: **COMMERCIAL GENERAL LIABILITY**
CG 20 12 05 09

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – STATE OR GOVERNMENTAL AGENCY OR SUBDIVISION OR POLITICAL SUBDIVISION – PERMITS OR AUTHORIZATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

State Or Governmental Agency Or Subdivision Or Political Subdivision:
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

POLICY NUMBER: COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – (FORM B)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

SCHEDULE

Name of Person or Organization:

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you.

CG 20 10 11 85

Arising out of your work

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 10 10 01

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

Name of Person or Organization:

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

A. **Section II – Who Is An Insured** is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of your ongoing operations performed for that insured.

B. With respect to the insurance afforded to these additional insureds, the following exclusion is added:

2. Exclusions

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 site 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.

CG 20 10 10 01

Ongoing Operations

© ISO Properties, Inc., 2000

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 10 07 04

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

Name Of Additional Insured Person(s) Or Organization(s):	Location(s) Of Covered Operations

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.

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.

© ISO Properties, Inc., 2004

- CG 20 10 07 04

Ongoing Operations

ISO Forms (continued)

- CG 20 26, Additional Insured--Designated Person or Organization
- CG 20 33, Additional Insured--Owners, Lessees or Contractors--Automatic Status When Required in Construction Agreement with You
- CG 20 37, Additional Insured--Owners, Lessees or Contractors--Completed Operations
- CG 20 38 04.13, (Introduced in 04.13) Additional Insured--Owners, Lessees or Contractors--Automatic Status for Other Parties When Required in Written Construction Agreement

Back to CG Forms Listing

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 37 04 13

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

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations
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.

© Insurance Services Office, Inc., 2012

CG 20 37 04 13

Your Work

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.

SAMPLE

CG 20 38 04 13
Addtl. Insured
when required
by WRITTEN
Contract

More ISO Forms - 2019 Versions

- CG 20 39 12 19 — Additional Insured – Owners, Lessees Or Contractors – Automatic Status When Required In Written Construction Agreement With You (Completed Operations) [Designed to use with the CG 20 33 that applies only to Ongoing Operations] CG 20 33, Additional Insured--Owners, Lessees or Contractors--Automatic Status When Required in Construction Agreement with You
- CG 20 40 12 19 — Additional Insured – Owners, Lessees Or Contractors – Automatic Status For Other Parties When Required In Written Construction Agreement (Completed Operations) – [Designed to use with the CG 20 38 that applies only to Ongoing Operations]

Discussion of Excess/Umbrella Policies

- Must review a complete copy of any Excess/Umbrella liability policies with all Endorsements
- Excess policies are NOT standardized, and many of these Exclusions may be built into the policy itself, rather than as an endorsement to the standard general liability policy like the ISO Commercial General Liability policy, the CGL.

Excess Policies

- The correct schedule of the underlying policy, limits, and effective dates are the same as listed in the Excess Policy
- Exclusions, Terms, Limitations, or Conditions – that are part of, or have been added to, the Excess Policies compared to the underlying policy can vary,
- Defense provisions – Same inside/outside defense limits provisions for Excess policies attachment point limits (erode limits or pay in addition to limits)

Excess/Umbrella Policies

- Are Additional Insureds on the primary policy covered on the Excess
- Are Automatic Additional Insureds enrolled when required by the Contract, or
- Must Additional Insureds be advised or endorsed onto the Excess Policy
- Is the Excess Policy Primary & Non-Contributory for an AI (can be by endorsement)

Excess Policies

- It is much easier to spot these changes on the ISO CGL policy since the policy is standardized and any changes from the unmodified policy must be made by endorsement.
- There is no “standard” Excess Policy in the industry, and limitations or exclusions can be in the text of the policy itself and not just on endorsements!
- Excess policies must be obtained, examined, and correctly modified as necessary to comply with all the underlying policies' provisions!

Montrose Exclusion

"Montrose exclusion" refers to an insurance endorsement designed to prevent coverage for damage that began before a policy's inception, even if the insured was unaware of it at the time

The term originates from the California Supreme Court case *Montrose Chemical Corp. v. Superior Court*, where the court ruled that liability coverage could extend across multiple policy periods for continuous, progressive damage. In response, insurers developed the "Montrose Endorsement" to limit this, effectively creating a "known loss" provision that is now standard in many commercial general liability (CGL) policies.

Additional Insured Requirements

- MUST NAME AS ADDITIONAL INSURED
- MUST STATE WITHIN AGREEMENT THE ADDITIONAL INSURED IS REQUIRED, TRIGGER WHERE REQUIRED BY CONTRACT
- ADDITIONAL INSURED STATEMENT CAN BE PROVIDED VIA THE AGREEMENT AND NOT REQUIRE A SPECIFIC ADDITIONAL INSURED ENDORSEMENT

Additional Insured Requirements

- MUST COVER ONGOING WORK, BASED ON EXPOSURES
- MUST INCLUDE COMPLETED OPERATIONS IF THERE IS AN EXPOSURE 3-5 YEARS
- MUST PROVIDE COPY OF DECLARATION PAGE TO KNOW THE EXTENT OF EXCLUSIONS

Risk Transfer Best Practices

PRE – BID SPECIFICATIONS INCLUDE ALL INDEMNITY PROVISIONS AND INSURANCE REQUIREMENTS

REQUIRE VERIFICATION BY BIDDERS THAT THEY HAVE THE ABILITY TO BE COMPLIANT

Tools to Use (cont)

Use Agency Approved Contract language & Additional Insured endorsements!

Use a Summary of “Indemnity and Insurance Requirements” with signature for RFPs, RFQs, Purchase Orders, MOUs, etc. to identify problems earlier, trigger coverage, and make the process simpler & quicker!

Tools to Use (cont)

Having a signed “Summary” triggers available “written” coverage provision for:

Failure to comply with these requirements shall be considered a material breach of contract.

I have read and understand the above requirements and agree to be bound by them for any work performed for the Entity.

Authorized Signature: _____

Date: _____

By: Contractor (Print Name) _____

Implementing a Contract Management Program

- If you are implementing a new Risk Transfer Program or updating an existing program the following slides will discuss best practices for success!

Implementing a new program

- Identification of Agency Needs
- Developing as key stakeholder group
- Identify the current process and identify current roadblocks
- Develop a clear and concise process for processing agreements

Implementing a new program

- Identify the touch points of every agreement
- Re-state organization hierarchy for approval of agreements
- Create clear and concise written instructions
- Train all stakeholders prior to implementation

Verification of Insurance

- Require liability policy declarations pages
- Understand the type of coverage and what may be excluded. Excluded coverage means no coverage!

Evaluating Risk Verification/Tracking Options

- Capabilities of your system
- Contract Tracking/reporting
- Vendor Tracking
- Centralized vs De-Centralized
- Contract Templates
- Insurance Limits by Type of Agreement
- User Security Guidelines

Evaluating Risk Verification/Tracking Options

- Insurance Tracking
- Insurance Verification
  - AI Driven
  - Internal Verification
  - Service Provider Model
- How many users of the systems
- Security Protection
- Ease of Use
- Report Generation

Risk Transfer Best Practices

- Training
- Accountability
- Documentation
- Annual Renewals
- Organizational Communication

The greater danger for most of us lies not in setting our aim too high and falling short; but in setting our aim too low, and achieving our mark.

\- Michelangelo

Questions?

Contact David

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Strategic Accounts
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Upcoming Sessions

- **Compliance Coffee Talk**: Practical Tips + Expert Q&A, new theme each month (3rd Tuesdays)
- **Contractual Risk Transfer 101 & 201**: Workshops to build solid foundations (quarterly)

… and lots more. For invites, follow Evident on LinkedIn, or shoot us an email.

About Evident

Evident's platform gives risk leaders the flexible, AI-powered automation and insight they need to find blind spots, fix bottlenecks, and close the compliance gaps that leave them exposed to third-party risk.

Why Cities & Towns Trust Evident

Cities everywhere depend on a complex network of vendors that are critical to their success, but also a growing source of risk. When managing these risks is high-stakes, Risk & Compliance teams need more than manual reviews, spreadsheets, and narrow point solutions. They need robust systems that they can easily adapt to *their unique risk environment*, with automation to verify *actual evidence*, not just checklists.

That's where cities and counties turn to Evident to verify COIs and contracts, streamline diligence, and reduce 3rd-party risk, all with a consumer-grade experience that makes compliance easier for everyone.

Our **Impact**



Avoid Losses



Reduce Admin Overhead



Fast Results, Full Verification

Trusted by:

PRISM

CJPRMA EST. 1986

CIRA California Intergovernmental Risk Authority

City of Fresno Incorporated 1885

CSUN California State University Northridge

NTTA North Texas Tollway Authority

County of San Diego