

Don't Get Caught Holding Bag in Multi-Employer Construction Projects

Large construction projects involving multiple contractors are ripe for claims and if your company is involved in such an enterprise, one of your top priorities needs to be risk mitigation.

With the specter of property damage, material losses and workplace injuries looming large, especially when there is more than one employer on a site, it is imperative that all parties hash out responsibilities and insurance issues prior to the project starting

All the parties need to discuss openly risk-transfer strategies in their contracts to limit their liability for claims and adopt procedures for handling the anticipated risks. You should cover waivers of subrogation and reciprocal insurance requirements.

Insurance requirements

If you're concerned about the insurance implications, discuss the matter with us or your broker.

Start by brainstorming about possible claims that may arise during the project. After you've come up with that list, it will be easy to identify the types of insurance you'll need.

A short list would likely include:

- Builder's risk insurance
- Commercial general liability insurance
- Workers' compensation coverage
- Professional liability insurance
- Property insurance.

Depending on the project, though, specialized types of insurance may also be required.

Once you've finalized the list, the parties can negotiate who can get the best rate for coverage that is available to more than one party.

In the event of catastrophic liability claims, commercial umbrella insurance provides a broader level of coverage beyond the scope of the coverage provided by underlying commercial property and liability insurance policies.

When losses exceed the coverage limits of standard business auto, business property or commercial general liability (CGL) policies, commercial umbrella policies take effect to cover the balance (subject to policy limits and other conditions).

Property owners have filed countless lawsuits against contractors, subcontractors and suppliers, alleging damages arising out of construction defects. These contractors have often tendered claims under their CGL policies.

These insurance claims have been litigated ad nauseum and the emerging consensus appears to be that construction-defect claims are generally not covered under CGL policies.

Waivers of subrogation

A waiver of subrogation provision transfers liability for a claim to another party's insurance.

These waivers are intended to reduce litigation that might otherwise arise when an insurer feels another party was fully or partially responsible for the claim.

With a waiver, an insurer only has rights against its policyholder. If the policyholder has contractually waived subrogation to a subcontractor, the insurer generally cannot use subrogation to recover its payment for a loss from the contractor.

Waivers of subrogation promote economic efficiency because only one party needs to insure a particular risk. Addressing these issues upfront in your contract is the first step to controlling the financial impact to all parties involved.

Wrap-ups

Large construction projects are becoming more difficult to finance because of increasing costs, lack of control and rising litigation. In recent years, "wrap-up" insurance programs have been used to help decrease the cost of construction while making the project economically safer.

In a wrap-up, the project owner furnishes a single insurance program for all parties involved in the project for the duration of the project. This insurance relates to the exposures of the project and protects the project owner, contractor and all tiers of subcontractors.

Most wrap-ups include workers' comp, general and excess liability, and builder's risk coverages (auto liability and contractors equipment are not included). Wrap-ups can include project architects/engineers errors and omissions coverage and other optional coverages.

Wrap-ups on large construction projects can be either owner-controlled or contractor-controlled. Owner-controlled wrap-ups account for about 90% of the wrap-up programs currently being performed in the U.S.

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