

Does Your Insurance Cover What You Agreed to in That Contract?

Most construction projects involve written contracts. A contractor signs a contract with the project owner, with the general contractor, or with a subcontractor on the project. The contract normally spells out the obligations of the contractor regarding, among other things, the insurance the contractor must carry and liability that he will assume. Construction contracts often contain "indemnification" agreements under which the contractor agrees to assume some of the owner's or general contractor's liability for accidents that occur during the project. Should something happen, will the contractor's general liability insurance policy pay for the damages he assumed?

The policy is probably similar to the Insurance Services Office's *Commercial General Liability Coverage Form*. This form covers the injury or damage for which the insured is liable because he assumed liability in an "insured contract" executed prior to the accident. It also covers attorney fees and other litigation expenses to defend the owner or GC if the contractor agreed to assume those costs in the contract. By an insured contract, the form means:

- A lease of premises
- A sidetrack agreement with a railroad
- An easement or license agreement
- An indemnification agreement with a municipality
- An elevator maintenance agreement
- Other business contracts

Contractors are mainly concerned with these "other" business contracts, as construction contracts fall into this category. The general liability form covers the tort liability of one party assumed by another. This means that, for coverage to apply, the first party must have some legal responsibility for injury or damage suffered by someone else.

For example, assume GC hires SC to run the cabling in an office building GC is constructing. GC and SC sign a contract in which SC agrees to assume GC's liability for injuries and damage SC may cause during the project. One of SC's employees trips over a toolbox that was resting on a ladder, and the falling tools injure an employee of another contractor on the job. The injured employee sues both GC and SC for medical costs and pain and suffering. Because SC agreed to assume GC's liability for injury or damage suffered by a third party (GC's tort liability), the contract qualifies as an insured contract. SC's liability insurance will cover GC's liability and provide legal defense for GC.

The insurance will not cover all of a GC's tort liability, however. A third party must suffer bodily injury or property damage before coverage will apply. Suppose GC turns the completed building over to the owner, and the owner finds that computer networks do not work in four offices. The owner determines that the problem is the result of faulty cabling, and he sues GC and SC. Even though SC has agreed to assume GC's liability, the liability insurance will not cover this loss. That is because the building owner did not suffer property damage. The building is defective, but it has not been damaged.

Contractors should expect to find indemnification agreements in most construction contracts. Because of this, the contractual liability coverage contained in general liability insurance policies is critical to their financial health. It is very important for contractors to review their liability policies to ensure that their insurance companies have not limited this coverage.

Contractual liability coverage is vital to a contractor's business. Make sure that it does all that you need it to do.