



RISK MANAGEMENT ALERT



RISK MANAGEMENT ADVISORY
Utica National Insurance Loss Control Department Bulletin

TOPIC: Contractual Liability Guidelines

SCOPE: Construction projects are complex and present many pitfalls, which can result in a liability exposure. This Risk Management Alert presents a number of key actions that should be taken to help reduce contractual liability exposures.

BACKGROUND: Information supplied by the U.S. Environmental Protection Agency (EPA) and the U.S. Consumer Product Safety Commission (CPSC) was used in developing this Risk Management Alert.

- One of the first keys is to have good documentation of all transactions, contracts, insurance and agreements.
- All contracts should be in writing and contain the duties and responsibilities of all parties. Review all contracts with your attorney.
- Always exercise extreme care when entering into any contract agreement. Never allow work to commence until the contractor and subcontractors have obtained all required insurance that indemnifies your interest.
- One way to verify compliance with insurance guidelines is to require the contractor and subcontractors to furnish certificates of insurance, or better yet, endorsements showing your business as an additional insured under their policies of insurance. You should obtain two copies of all certificates of insurance and/or endorsements, and have your attorney review them to determine if they include appropriate language that indicates that the insurance will fully defend and indemnify your interest. The certificates of insurance should state the coverage provided is primary to any other coverage that may be available to your operations. The coverage should take effect immediately upon execution of the contract and be signed by a person authorized by that insurer to sign on its behalf.
- The contractor should agree to indemnify, hold harmless, and defend your operations and your agents, servants, and employees, and to hold you and them harmless from any and all lawsuits, claims, demands, liabilities, losses and expenses, including court costs and attorney's fees, for or on account of any injury to any person, or any death at any time resulting from such injury, or damage to any property, which may arise or which may be alleged to have arisen out of or in connection with the work covered by the contract. The contract should also require the contractor to post limits of indemnity, which are appropriate for the exposure. A hold-harmless and indemnification clause is only as good as the contract itself and the financial resources of the contractor.
- You should maintain contracts and certificates of insurance for five years.
- Work with your Utica insurance agent to make sure that you have proper coverages to defend your interests.