



**RISK MANAGEMENT ADVISORY**  
*Utica National Insurance Risk Management Department Bulletin*

## Contractual Liability for Artisan Contractors - Subcontractor Agreements -

When you decide to use a subcontractor, the key is to begin “managing” the relationship before the start of the project. Probably the most important step is having a well-written (i.e., attorney-reviewed) and comprehensive subcontractor agreement in place. Such a contract should make responsibilities and accountabilities clear enough so potential areas of dispute are minimized. While no one can guarantee disputes will be avoided, individual agreements should be tailored for every job.

The contract should identify the parties and clarify their job duties and responsibilities. It should start with a good general description of the nature of the job. Then, it should describe the work to be completed by the subcontractor. This area is frequently identified as “Scope of Work.” It’s critical to be as specific as possible in this area. Also, it is always good to refer to the materials, blueprints, and purchase and work orders.


It is preferable, too, that the subcontract designates a sub as an independent contractor. This distinction is frequently a contentious issue in lawsuits over jobsite accidents and poor work quality. If subcontractors are determined to be employees (especially by reviewing the “control” imposed), you might be found liable for taxes, payroll, job accidents, and injuries to third parties.

An **indemnification clause** provides you with further protection for work performed by a designated subcontractor. Simply stated, by indemnifying, the subcontractor promises it will stand by its work and protect you from all claims – including those for defective work, jobsite injuries and property damage. The subcontractor will assume the defense and pay attorney fees for all complaints arising out of the work performed by the subcontractor, its employees or sub-subcontractors.

Prior to the start of the job, you need to ensure that each subcontractor you contract with has workers compensation – including employer’s liability insurance, auto liability and general liability insurance with limits of liability at least equal to yours ( plus professional liability if design/build services will be rendered).

Finally, your firm should be named as an “additional insured” under the subcontractor’s comprehensive general liability policy for any liability arising out of the performance of work.

The information contained in this publication has been developed from sources believed to be reliable. It should not, however, be construed or relied upon as legal advice and Utica National accepts no legal responsibility for its correctness or for its application to specific factual situations.

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### **Additional Important Considerations:**

- **Never** sign a contract or agreement unless it has been reviewed by your attorney.
- **Maintain** good documentation of all transactions, contracts 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 a contract agreement. Never allow work to start until your subcontractors have obtained all required insurance that indemnifies your interest.
- **Maintain** contracts and certificates of insurance indefinitely.
- **Work with** your Utica National agent to make sure you have proper coverages to defend your interest.

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