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COVERING ALL OF LONG ISLAND, NEW YORK CITY AND UPSTATE NEW YORK

So you think there is coverage from your subcontractors general liability for you?

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The time has finally arrived! Owners/developers and contractors now understand why they cannot allow subcontractors to step foot on a project site without first securing certificates of insurance naming them as an additional insured, or without having a signed contract with the familiar hold harmless, indemnification, and waiver of subrogation wordings. Unfortunately, these practices are no longer enough to ensure that the coverage represented on those certificates actually exists.

Insurance Trends...

Potential Vulnerabilities

Insurance companies that have continued writing construction business over the last few years have increased their general liability rates considerably. Additionally, they have imposed strict endorsements and exclusions that seriously limit or eliminate coverage that most contractors expect for themselves and their subcontractors. One would assume these contractors are informed of these policy restrictions by their brokers or agents. However, I find this is rarely the case. Even if the contractor is informed of these restrictions,

the additional cost to correct the problems often becomes the deciding factor between purchasing the appropriate insurance and going without it. Unfortunately, GCs and developers who hire these subs will never be informed of the coverage shortfalls because the owner or GC only secures a Certificate of Insurance from the subcontractor that shows the limits of insurance and some additional insured wording. Certificates of Insurance do not show endorsement forms, or more importantly, the exclusions attached to the policy they represent.

Taking this one step further, I am starting to see endorsements on developers' and GCs' general liability policies that will restrict coverage for the GC if the underlying coverage and written contracts are not in place by the subcontractor performing work on their behalf. These endorsements do everything from reducing limits available for the developer/GC, to totally excluding coverage when the conditions are not met prior to a loss, or in some cases, prior to commencing work. Combine this scenario with unknown exclusions on the subcontractor's policy, and you could be looking at a situation where there is no coverage for anyone. Therefore, it is crucial that the coverage developers/GCs think they are getting actually exists.

So what can you do?

The best option is to add another procedure to supplement the common practice of requiring a certificate of insurance. First, you should request a copy of the decla-

ration pages from the contractor's policy, which will include the forms and endorsements schedule. The Certificate of Insurance is nothing more than information regarding the limits the insured has and does not supersede or change the policy in any way. The declaration pages of a policy show the endorsements and exclusions that are attached to that policy. Most of the time, the form number and the title of the endorsement (such as CG 20 10 1987- Additional Insured Endorsement) will be listed. In other cases, the form number with no title will appear. If the latter occurs, the owner/GC should obtain copies of all the forms for a thorough review.

There are key items owners and GCs should be looking for on their subcontractors' policy declaration pages. You should look to your insurance broker or agent to assist you in analyzing the coverage, since this task goes beyond the typical skills of most clerical personnel in the contractor's office.

In general terms, it's important to concentrate on all forms that start or have the word "exclusion" in the title. Below are some of the endorsements and exclusions to look out for:

1. Designated Work Exclusion (CG 21 34 01 87)
2. Contractual Liability Limitation (CG 21 39 10 93)
3. Bodily Injury Exclusion to Employees or Exclusion of Injury to Employees
4. Exclusion-Independent Contractors Employees

5. Contractors Condition of Coverage.

Unfortunately, there are more exclusions and endorsements than the examples mentioned, and more that are being added to contractors' policies every year. An analysis needs to be performed even if your policy or a subcontractor's policy is renewing with the same insurance company.

Closing Remarks

As you can see from just these few examples, it is imperative that owners and GCs be completely informed regarding the coverage held by anyone performing work on their projects and their own policies as well. Once you are aware of a particular contractor's lack of coverage, you can change to a properly insured contractor, or give him the option of changing his coverage before any additional work is performed. Of course, your selection of any contractor will be guided by other criteria, such as the quality of work, customer service, fees, etc. However, an understanding of the insurance coverage carried by any given subcontractor must also be viewed with equal diligence. Inadequate insurance can significantly affect a project's ultimate success and profitability. It is always possible to budget in the cost of proper insurance, yet it is nearly impossible to budget in an uncovered claim.

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