

Why Subs Must Carry Liability Insurance

by Quenda Behler Story

As the general contractor, you have liability insurance to protect you from claims for bodily injury or property damage caused by your negligence. So why, you ask, is it important for your subs to have liability insurance, too? If they don't, surely that's their problem, not yours. After all, you have your own very expensive liability insurance to protect you.

Well, that's part of the problem. Most liability policies only protect you from the consequences of your own negligence. But it's not impossible that you could get sued, and wind up having to pay for the consequences of somebody else's negligence. To get your insurance policy to cover that, so it doesn't come out of your own pocket, you may need a rider or endorsement on your policy.

Someone Else's Mistake

Who is this person whose negligence, carelessness, bad behavior, or just plain stupidity you might have to pay for? Actually, it's not always a sub — it could also be an engineer or architect on a project. If they don't carry Errors and Omissions insurance, that could become a problem for you, because many times they're involved with things that you're responsible for, such as the proper installation of trusses. Say the engineer's or architect's instructions are bad and things go wrong. If the engineer or architect is uninsured, the injured party will look for someone else to pay for the damage, and that could be you.

What's more, if you give your liability policy and its riders a careful read, you may find that you aren't protected from the consequences of your own negligence if you didn't get an insurance certificate from the sub who

was working on the part of the job that led to the dispute.

Who Gets to Pay

Here's another reason to get those insurance certificates. There was a recent lawsuit in the Midwest by a subcontractor's employee who was injured because of a combination of the subcontractor's carelessness and the contractor's failure to adequately supervise the sub. The injured employee could not sue his employer for negligence because the only thing an employee can collect from an employer is workers' comp. However, he was able to successfully sue the general contractor for negligence in failing to properly supervise the sub.

The contract between the general contractor and the subcontractor in that case contained a clause that you should have in your contracts with subs. The clause required the sub to indemnify (reimburse) the contractor for any money that the contractor had to pay because of "claims rising out of the sub's work." The general contractor put in a claim for indemnification from the sub. The sub said, "Hey, I don't have to pay, because the injured person is my employee and is only entitled to comp from me. Since I don't have to pay him, I don't have to pay indemnification to you."

The court did not agree with the subcontractor's reasoning. The court said it's not the employment relationship that's kicking in, it's the indemnity clause. The sub has to reimburse the general contractor because the general contractor and the sub have a contractual relationship, not an employer-employee relationship.

So far, so good for the general contractor, but what if the sub doesn't

have any insurance to help him pay the indemnification? In that case, the indemnity clause won't help the general contractor a bit, because, as the ancient legal theory states, you can't get blood out of a rock. If the sub can't afford liability insurance to begin with, odds are, he's judgment proof.

Deep Pockets


Another ancient legal theory you should worry about is the "Target the deep pockets" approach to lawsuits. You don't want the deep-pockets target to be you, but here's how it could be: Sometimes, the general and the sub are both liable for an injury that happens to a third party, such as the homeowner or someone who wanders onto the job site. If the injured person sues and wins, but the sub doesn't have insurance, the general will have to pay the entire claim.

Here's a slightly different reason for your subs to carry liability insurance. Instead of the sub's employee being hurt, let's suppose it's the homeowner who is injured. Even worse, suppose it's the homeowner's small child who is injured because of the subcontractor's negligence. That's always good for a big verdict.

If a \$2 million verdict is entered, and the sub and the general contractor each have a million dollar limit on their policy, their two insurance companies will pay off the verdict. But what if only the general contractor had insurance? He could really use some help from his sub to pay off the claim, but the help won't be there if the sub is uninsured or does not have a lot of money.

That's the contractor's problem, not the plaintiff's. If the plaintiff can't get the money from both defendants, he

can go after one defendant for all of it. The plaintiff will concentrate on you, the general contractor, because you're more collectible than the sub.

I understand the realities of the market. Sometimes you're less competitive if you hold out for subs with adequate insurance. But if things go wrong, the money you save by hiring an uninsured sub could be the most expensive savings you ever get, so be sure to get those insurance certificates. Ask the sub to name you on the policy so that the insurance company will send the certificate to you directly and will notify you if it's cancelled. 

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