



RISK and Contractor Insurance

The Foundation for a Wireless World.



Who Am I and What Do I Do

Why Am I Here

Liability versus Workers' Compensation

An Example

A worker is on a tower site. He works for a subcontractor to the general contractor (GC). He is climbing the tower and accidentally loses his balance and falls. The cause may be that he is not properly tied off with his fall arrest equipment.

His employer's Workers' Compensation pays for all medical costs and lost wages.

The injured worker is still not happy. He decides to sue everyone involved in the site; the land owner, GC and the tower owner, alleging a defective condition of the tower and an unsafe work place was the cause of his injury. He is seeking monetary damages for pain, suffering, loss of the ability to enjoy his hobbies, time with his family, etal.

When the tower owner was notified of the suit, they tender the claim to the GC because they contractually agreed to indemnify and hold-harmless the tower owner. Additionally, the contractor agreed to add the tower owner as an additional insured on the contractor's Commercial General Liability insurance policy. The GC would then tender the tower owner's claim for indemnity to his subcontractor, the employer of the injured party. (This would be the typical manner in which a claim of this nature would be handled.)

The employer's General Liability insurer would respond to the claim on behalf of the additional insured/GC and tower owner. Workers' Compensation would not cover the claim against the tower owner or GC as they are not the employer of the injured worker.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – BODILY INJURY TO CONTRACTORS' OR SUBCONTRACTORS' EMPLOYEES

- A. The following exclusion is added to Paragraph 2. **Exclusions of Section 1 – Coverage A – Bodily Injury and Property Damage Liability:**

2. Exclusions

This insurance does not apply to:

“Bodily injury” to:

- a. Any “employee” of any: (1) Contractor; or (2) Subcontractor; and
 - (a) Arising out of and in the course of 1) Employment; or 2) Performing duties related to the conduct of an insured’s business or the business of a contractor or subcontractor.
- b. The spouse, child, parent, brother or sister of that “employee” as a consequence of Paragraph a. above.

This exclusion applies:

- (1) Whether an insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

- B. The following definitions are added and apply with respect to this endorsement: “Employee” under this endorsement means any person who is hired for a wage, salary, fee or payment to perform work. “Employee” includes any leased worker or temporary worker, loaned worker, or “volunteer worker”.

Exclusion – Bodily Injury to Contractors’ or Subcontractors’ Employees

Removes coverage to the Named Insured and Additional Insured

Because of this exclusion the insurance would not apply to ‘bodily injury’ to any ‘employee’ of any contractor or subcontractor arising out of and in the course of employment or performing duties related to the conduct of an insured’s business or the business of a contractor or subcontractor.

This exclusion applies whether an insured may be liable as an employer or in any other capacity, and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY .
Exclusion – Employer’s Liability

A. Exclusion e. of Paragraph 2. **Exclusions of Section I- Coverages, Coverage A Bodily Injury and Property Damage Liability** is deleted and replaced by the following:

"Bodily injury" to:

1. An "employee" of the insured arising out of and in the course of:
 - a. Employment by the insured; or
 - b. Performing duties related to the conduct of the insured's business; or
2. The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph 1. above.

This exclusion applies whether the insured may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

Exclusion – Employer’s Liability

Removes Indemnification to the Additional Insured

This exclusion deletes coverage for bodily injury to an ‘employee’ of the insured arising out of and in the course of employment by the insured or the performance of duties related to the conduct of the insured’s business.

The exclusion applies whether the insured may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

Removes the exception for ‘liabilities assumed within an insured contract’ found within the standard Employer’s Liability exclusion found within all General Liability policies.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

INJURY TO WORKER EXCLUSION

With respect to this endorsement, paragraph e. **Employer's Liability** of subsection **2. Exclusions of SECTION I- COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY** is replaced by

Employer's Liability

"Bodily injury" to

(1) An "employee" of the insured arising out of and in the course of:

- (a) Employment by the insured; or
- (b) Performing duties related to the conduct of the insured's business; or

(2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies:

- 1. Whether the insured may be liable as an employer or in any other capacity; and
- 2. To any obligation to share damages with or repay someone else who must pay damages because of the injury.

The following is added to **SECTION I-COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY**

DAMAGE LIABILITY, subsection **2. Exclusions** of the policy.

This insurance does not apply to:

- 1. "Bodily injury" to

- a. An "employee," "leased worker," "temporary worker" or "volunteer worker" of any insured;
- b. Any contractor, subcontractor, sub-subcontractor or anyone hired or retained by or for any insured; or
- c. Any employee or anyone directly or indirectly employed by such contractor, subcontractor or sub-subcontractor or anyone for whose acts such contractor, subcontractor or sub-subcontractor may be liable

if such "bodily injury" arises out of and in the course of their employment or retention of such contractor, subcontractor or sub-subcontractor, regardless of whether or not it is caused in part by you; or

- 2. Any obligation of any insured to defend, indemnify or contribute with another because of "bodily injury" to
 - a. An "employee," "leased worker," "temporary worker" or "volunteer worker" of any insured;
 - b. Any contractor, subcontractor, sub-subcontractor or anyone hired or retained by or for any insured; or
 - c. An employee of any contractor, subcontractor or sub-subcontractor.

Exclusion – Injury to Worker

Removes Coverage to the Additional Insured and Named Insured and Indemnification

This exclusion combines the information found on the previous two slides and adds more clarification as to what is excluded.

Exclusion may state the insurance does not apply to ‘bodily injury’ to

- a. An ‘employee’, ‘leased worker’, ‘temporary worker’ or ‘volunteer worker’ of **any insured**.
- b. Any contractor, subcontractor, sub-subcontractor or anyone hired or retained by or for **any insured**.
- c. Any employee or anyone directly or indirectly employed by such contractor, subcontractor or sub-subcontractor or anyone for whose acts such contractor, subcontractor, sub-subcontractor may be liable.

The insurance may not apply to any obligation of any insured to defend, indemnify or contribute with another because of bodily injury as in a., b., and c. above.

This applies to all claims and ‘suits’ by any person or organization for damages, indemnity and/or any obligation to share damages with or repay someone else who must pay damages because of the injury.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

INJURY TO TEMPORARY, VOLUNTEER OR CASUAL WORKER EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

This insurance does not apply to "bodily injury" or "personal and advertising injury" to any:

1. "Temporary worker";
2. "Volunteer worker";
3. "Casual worker"; or
4. The spouse, child, parent, brother, sister or registered domestic partner of that worker as a consequence of **1.**, **2.** or **3.** above.

For the purposes of this endorsement only, "temporary worker" means:

A person who is furnished to any insured to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions; however, "temporary

worker" does not include a person who is furnished to any insured by a labor union to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

For the purposes of this endorsement only, "casual worker" means:

1. A person, other than a person furnished to you by a labor union, who acts at the direction of and within the scope of duties determined by any insured, and is employed by any insured for a short time and for a limited and temporary purpose; or
2. A person for whom any insured, or a labor leasing firm acting on behalf of any insured, does not withhold federal income taxes and pay federal unemployment tax.

Exclusion – Injury to Temporary, Volunteer or Casual Worker

Removes coverage to both the Named Insured and Additional Insured

Another exclusion aimed at denying coverage for injury to any:

1. Temporary Worker
2. Volunteer Worker
3. Casual Worker, or
4. The spouse, child parent, brother, sister or registered domestic partner of that worker as a consequence of 1., 2. or 3. above

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

INDEPENDENT CONTRACTORS LIMITATIONS OF COVERAGE

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

A. Section IV - Commercial General Liability Conditions is amended to include the following language:

As a condition to and for coverage to be provided by this policy, you must do all of the following:

1. Obtain a formal written contract with all independent contractors and subcontractors in force at the time of the injury or damage verifying valid Commercial General Liability Insurance written on an "occurrence" basis with Limits of Liability of at least:
 - a. \$1,000,000 each "occurrence";
 - b. \$2,000,000 general aggregate, per project basis; and
 - c. \$2,000,000 Products-Completed Operations aggregate.
2. Obtain a formal written contract stating the independent contractors and subcontractors have agreed to defend, indemnify and hold you harmless from any and all liability, loss, actions, costs, including attorney fees for any claim or lawsuit presented, arising from the negligent or intentional acts, errors or omissions of any independent contractor and subcontractor.
3. Verify in the contract that your independent contractors and subcontractors have named you as an additional insured on their Commercial General Liability Policy for damages because of "bodily injury", "property damage", and "personal and advertising injury" arising out of or caused by any operations and completed operations of any independent contractor or subcontractor. Coverage provided to you by any independent contractor or subcontractor must be primary and must be provided by endorsement CG 20 10 (7/04 edition) and CG 20 37 (7/04 edition), or their equivalent. Completed Operations coverage must be maintained for a minimum of two years after the completion of the formal written contract.

This insurance will not apply to any loss, claim or 'suit' for any liability or any damages arising out of operations or completed operations performed for you by any independent contractors or subcontractors unless all of the above conditions have been met.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.
CONTRACTORS COVERAGE LIMITATIONS AND AUDIT**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART**

B SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, 5. Premium Audit, subparagraph c. is deleted and replaced with the following:

c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request. In addition:

- 1) You shall provide us upon our request copies of Certificates of Insurance that you shall require and have obtained from your subcontractors before any work is performed on your behalf. You shall maintain copies of these Certificates during and for up to 5 years after the term of such work.
- 2) The Certificate must evidence coverage and Limits of Insurance equal to or greater than the coverage and Limits of Insurance provided by this policy in force for the term of the work performed for you. We, however, shall not require the Certificate to evidence coverage and Limits of Insurance in excess of the following:
 - a) General Aggregate Limit \$ 2,000,000;
 - b) Products/Completed Operations Aggregate Limit \$ 2,000,000; and
 - c) Each Occurrence Limit \$ 1,000,000.
- 3) We will adjust the annual premium charged you and apply the highest applicable primary payroll or cost class rates of the “total cost” of all work you subcontract as the basis for the additional premium for any subcontractor:
 - 1) whose Certificate of Insurance shows Limits of Insurance or coverage less than that required by Paragraph **(2)** above; or
 - 2) for whom you do not have a Certificate.
- 4) Any premium charged shall be paid to us by the first Named Insured within 30 days of the date of invoice.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

Contractors Coverage Limitations and Audit

Requirements Related to Subcontractors – Denial of Coverage vs. Premium Audits

Denial of Coverage

As a condition to and for coverage to be provided, the Named Insured must do all the following:

1. Obtain a formal written contract with all independent contractors and subcontractors in force at the time of injury.
2. Minimum Limits of Liability and specific endorsements may apply.
3. Independent contractors and subcontractors must agree to defend, indemnify and hold harmless the First Named Insured .

Premium Audits

A coverage limitation that requires the First Named insured to obtain and maintain the same requirements under 'Denial of Coverage' side, but instead of denying coverage completely the insurer has the right to adjust annual premium on the 'total cost' of all work subcontracted when coverage limits are less than required or when subcontractor Certificates of Insurance are not on file.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION - OCCUPATIONAL DISEASE

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. Exclusions

SECTION 1 - COVERAGES. COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY.

Paragraph 2. **Exclusions**, and **SECTION 1- COVERAGES, COVERAGE B PERSONAL AND ADVERTISING INJURY**, Paragraph 2. **Exclusions** are amended to include the following additional exclusion:

Occupational Disease

This insurance does not apply to “bodily injury”, “property damage” or “personal and advertising injury” arising out of any “occupational disease” sustained by any “employee” of any insured or any “leased worker” or “temporary worker”.

B. Definitions

For the purpose of this endorsement, **SECTION V – DEFINITIONS** is amended to include the following additional definition:

“Occupational disease” means any abnormal condition or disorder, other than one resulting from an occupational injury, caused by a repetitive exposure to environmental factors associated with employment. It includes acute and chronic illnesses or diseases, which may be caused by inhalation, absorption, ingestion or direct contact.

This endorsement does not change any other provision of this policy.

Exclusion – Occupational Disease (Absolute)

Removes Coverage to Named Insured and Additional Insured

Excludes coverage for any ‘bodily injury’ to any individual resulting from any occupational disease arising out of **any** insured’s operations, completed operations or products.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Cross Liability Exclusion

CROSS LIABILITY EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL LIABILITY COVERAGE FORM

The following exclusion is added to SECTION I - COVERAGES, paragraph 2. Exclusions: Insurance provided under this Coverage Part does not apply to:

Cross Liability

Any "injury or damage" arising out of any claim or suit brought by any insured against another insured.

Exclusion – Cross Liability

Crazy Stupid Denial of Coverage

Insurance does not apply to any injury or damage arising out of any claim or suit brought by any insured against another insured.

An Example:

A contractor has a crew out welding on a tower and something goes wrong and the tower suffers severe fire damage and needs entirely replaced. The tower owner would make a claim against the contractor to recover such expenses as their crew caused the damage. Because the tower owner is an additional insured on the General Liability policy would not have coverage under the contractor's insurance. The contractor is still legally liable for the damages and without insurance to cover the costs this would come directly out of the contractor's pocket.

Exclusion – Work Height Example

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – WORK HEIGHT (ABOVE 36 FEET)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY,

2. Exclusions of the Commercial General Liability Coverage Form, and **SECTION I – COVERAGES,**

PRODUCTS/COMPLETED OPERATIONS, BODILY INJURY AND PROPERTY DAMAGE LIABILITY,

2. Exclusions of the Products/Completed Operations Liability Coverage Form are amended to add the following:

This insurance does not apply to:

Work Height

(1) “bodily injury” or “property damage” arising directly or indirectly out of ongoing operations performed, by you or on your behalf, above a ground height of three stories or 36 feet, whichever is greater; or

(2) “bodily injury” or “property damage” included in the “products-completed operations hazard” and arising directly or indirectly out of “your work” performed above a ground height of three stories or 36 feet, whichever is greater.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

Exclusion – Work Height (Above XX Feet)

My Favorite Crazy Stupid Exclusion

This insurance does not apply to:

Work Height

1. “bodily injury” or “property damage” arising directly or indirectly out of ongoing operations performed by you or on your behalf, above a ground height of three stories or 36 feet, whichever is greater, or
2. “bodily injury” or “property damage” included in the “products-completed operations hazard” and arising directly or indirectly out of “your work” performed above a ground height of three stories or 36 feet, whichever is greater.

Disclaimer

Endorsements Come in All Shapes and Sizes

These are only samples of alarming exclusions and provisions we have found in insurance policies. The same or different language having the same effect on coverages may exist under a different title. There may also be additional provisions that put a contractor or a tower owner at an unacceptable level of risk. The language used in these slides is to make you aware of the risks that are out there.

Thank You

FOR FURTHER INFORMATION
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