

Insurance Slam Dunk:

Evaluating Coverage from the Sidelines

Wednesday, April 10th @ 4:10 – 5 PM MST



Introductions

Moderator: Mark Ewert, Director Vendor Management for Penn National Insurance

Panelists:

1. Andrew Moyad, CEO for Shared Assessments
2. Nathan Rowe, CTO for Evident
3. Mary Granville, Sr. Client Service Manager, Gallagher Global Brokerage
4. Charmi Patel, Vice President Vendor Management for Israel Discount Bank of NY

Agenda

- ❖ Introduction to the Starting Line-up (panelists) and the Game plan (topic).
Understanding importance of third-party insurance requirements.
- ❖ Review the plays that can be called – an Overview of the types of insurance coverages available and typically identified in vendor contracts.
- ❖ Play Calling 101 – identifying the insurance coverages you expect your vendor's to carry, why and how much coverage.
- ❖ Staying out of foul trouble – how to identify insurance requirements in contracts?
- ❖ Bringing home the Win – how do I ensure the third party has the appropriate coverages?
- ❖ Questions?????? from the floor

Types of Insurance Coverage Available and Typically Required in Contracts

- Commercial General Liability
 - Covers company for third party claims from bodily injury or property damage arising out of business operations including if you have a product, product completed operations aka product liability
 - Standard Limits - \$1,000,000 Per Occurrence and \$2M General Aggregate, note the General Aggregate can be set to Per Policy or Per Location
- Commercial Auto Liability
 - Covers direct physical damage to owned or leased vehicles and third party claims alleging bodily injury or property damage.
 - \$1,000,000 Combined Single Limit, Per Accident
- Workers Compensation (WC) & Employers Liability (EL) (Two Parts)
 - Part 1 – WC - provides employees injured on job with medical and income benefits, benefits can vary by jurisdiction aka state (statutory coverage)
 - Part 2 – EL – covers company for liability that arise from negligence on the part of the employer, such as failing to provide proper safety equipment or training, or from the actions of other employees.
 - \$100,000/\$500,000/\$100,000 OR \$500,000 or \$1,000,000
 - By Disease,
- Umbrella / Excess Liability
 - Increases total liability limits excess over the General Liability, Auto Liability and Employers Liability.
- Property Insurance
 - Covers company for direct losses to equipment, computers, furniture, fixtures, leasehold improvements, etc. resulting from fire, windstorm, theft and other perils

Types of Insurance Coverage Available and Typically Required in Contracts – Professional Services

- Professional Liability aka Errors & Omissions (“E&O”) OR Tech E&O
 - Covers company for claims arising from misconduct, negligence or incompetence in the execution of a service (vs a product) for a fee
- Cyber Liability
 - Provides coverage costs and expenses incurred as a result of a breach of the firm’s electronic network The policies cover a variety of expenses associated with data breaches, including: forensic and legal fees, notification costs, credit monitoring, costs to defend claims by state and federal regulators. Coverage is also available for cyber extortion and business interruption

Other Coverages that may be required

- Environmental aka Pollution Liability aka Contractors Pollution Legal Liability
- Crime aka Fidelity Bond aka Employee Theft / Dishonesty including Third Party

Play Calling 101:

What Limits to Require?

- No exact answer, it's a business / risk management decision
 - Balance the need for transfer of risk with the cost and availability of contractors, preferably local
- Certain vendors/contractors in certain trades maintaining the required limits (such as smaller landscaping firms and cleaning services)
- A risk management perspective, ideally the vendor/contractor is maintaining limits adequate to respond to liability claims that could arise from any property damage or injuries caused by or arising out of their work
- CAUTION do not look at the issue strictly from a “cost of the contract” or “length of the project” perspective
 - A vendor/contractor performing a short inexpensive job can still cause a very large third party claim for damages for bodily injury or property damage arising out of their operations

Play Calling 101:

PLAYBOOK GUIDE

Some owners employ a “tier” system or risk analysis checklist where the required limits for Liability may be lower or higher depending on the exposures and nature of the work. When considering to require limits of insurance less than the requirement, factors include:

- What is the exposure to third parties (residents, visitors, general public, etc) to possible injury during the work?
- What are the maximum values exposed to property damage if the work results in fire, water damage, collapse, or other peril?
- Could a loss include a shut-down of the building which could result in interruption of operations?
- Is the work structural? Does it involved cranes or other heavy equipment?
- Does the work involved “hot work” or hazardous materials?
- Does the work involved remediation of mold or asbestos?
- Is the work “design work”?
- What is the financial loss to the company if there was a loss from the work or services provided?

SAMPLE TIER SYSTEM

Trade Classification	Amount Limit
Balcony Railings	\$ 1,000,000
Carpentry; Drywall & Insulation	\$ 5,000,000
Carpeting	\$ 1,000,000
Caulking & Sealing	\$ 1,000,000
Concrete Work	\$ 5,000,000
Demolition Excavation & Foundations	\$ 10,000,000
Electrical	\$ 5,000,000
Elevators	\$ 10,000,000
Food Service Equipment	\$ 5,000,000
Glass	\$ 5,000,000
HVAC	\$ 5,000,000
Janitorial	\$1,000,000
Junk Removal	\$1,000,000
Landscaping	\$ 1,000,000
Masonry	\$ 5,000,000
Painting & Finishes	\$ 1,000,000
Plumbing	\$ 5,000,000
Roofing, Waterproofing, & Sheetmetal	\$ 5,000,000
Scaffolds	\$ 5,000,000
Security Guard Service	\$ 5,000,000
Shower Doors	\$ 1,000,000
Sidewalk Bridges	\$ 5,000,000
Signs & Graphics	\$ 5,000,000
Site Improvement	\$ 5,000,000
Sprinkler System	\$ 5,000,000
Structural Steel	\$ 10,000,000
Surveying	\$ 1,000,000
Swimming Pool	\$ 5,000,000
Toilet Partitions	\$ 5,000,000
Trash Compactor	\$ 5,000,000
Waterproofing & Damp-proofing	\$ 5,000,000
Window Washing Equipment	\$ 5,000,000
Windows	\$ 5,000,000

Staying out of Foul Trouble: Evaluating Supplier Coverages And Limits

Coverage Limits

- Vary expectations based on the service and / or the risks
- Require coverages based on your actual risks, not on fixed checklists
- Understand sublimits but do not try to mandate them – the market is too fluid

Exclusions / Sublimits

- Watch for exclusions or sublimits where your risks are greatest
- Do not challenge exclusions that are required by law (e.g., regulatory fines for privacy compliance violations).

Retentions (SIR)

- Retentions are rising relative to the primary coverage amounts – these are often unrelated to a supplier's controls, incident history, or financial condition

Takeaway: *A supplier certificate of insurance (COI) is a reasonable but highly limited control check. These are not contracts, they guarantee you no coverage, they are not designed to disclose total coverage (only a requested minimum)*

Appreciating the Contractual Interplay Between Indemnification, Insurance, and Limitation of Liability

- **Indemnification**

A contractual obligation for one party to cover the losses suffered by another party

- **Limitation of Liability (LOL)**

A contractual limitation of the financial losses one party can cover for another party

- **Insurance**

- ✓ ***Insurance is never a guarantee that your supplier has either an obligation or an ability to cover your losses***, because any or all of the following may apply:
 - ✓ Indemnification is either limited or not stipulated (e.g., breaches)
 - ✓ Limitation of liability is either capped or qualified (e.g., 2x fees, \$1MM)

Takeaway: *Unless and until you understand the contractual interplay between these three areas for your material suppliers, there is little benefit or purpose in chasing COIs in your vendor management program. Focus instead on strengthening these contractual terms for your top 10, 20, or 50 suppliers as your priority.*

Bringing Home the WIN!

- Recommend collecting a certificate of insurance when the contract is signed and then create a process to collect a COI on an annual basis to confirm the company continues to maintain the required insurance coverage throughout the life of the contract and after if there is a products completed operations exposure or if the company maintains a “claims made” policy
- Companies may have an internal certificate tracking team or may hire a 3rd party company or even your insurance broker may have a solution that could fit your needs
- Sample Certificates are helpful and also expedite the process of the certificate being issued
- Formal Request forms, be specific how you would like to receive the certificate. COIs can be sent electronically
- In certain cases it may be a good idea to collect the Dec Page OR Additional Insured endorsement to confirm the COI matches the actual insurance policy
- CAUTION: Acord certificates are not the Policy and are typically issued by an insurance broker, not by the insurance carrier

Certificate of Insurance (COI): Acord 25 - Liability



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME:	
	PHONE NO. EXT:	FAX (A/C. No.):
INSURED	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	
	NAIC #	
	INSURER A:	
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL COVR	INSR. WORD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PERCENT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (EA OCCURRENCE) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMB/OP AGG \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Per accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				<input type="checkbox"/> PER <input type="checkbox"/> OTHER <input type="checkbox"/> STAINIE <input type="checkbox"/> ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER	CANCELLATION
	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE

Questions???