This document consists of 19 exhibits that outline information on contractual risk transfers. Topics include the following: types of risk-treatment techniques; an overview of the process for using indemnity and insurance clauses; the rationale for contractual risk transfer; residual risks in contractual transfer; the rationale for and types of indemnity clauses; points to look for in indemnity agreements; types of insurance to require; a risk-management/insurance checklist; liability insurance clause--PRIMA; alternative insurance clauses; the PRIMA general-liability endorsement; an alternative commercial general-liability endorsement; the property insurance standard clause; certificate of insurance; a protection scale; the process for dealing with non-compliance; guidelines for contract insurance provisions; and nine points to know about accepting certificates of insurance. (LMI)
ADVANCED RISK MANAGEMENT TECHNIQUES, INC.

CONTRACTUAL RISK TRANSFER
Passing the Hot Potato Without Getting Burned

Presented to: ASBO International
October 30, 1993
Boston, Massachusetts

Presented by: Steven P. Kahn, CPCU, ARM
Principal, ARM Tech

BEST COPY AVAILABLE

23701 Birtcher Drive, Lake Forest, CA 92630-1783 (714) 472-8324 • FAX (714) 472-9228
Independent Consultants
LIST OF EXHIBITS

1. Risk Treatment Techniques
2. Overview of Process for Using Indemnity and Insurance Clauses
3. Why Transfer Risks by Contract?
4. Inherent Risks in Contractual Transfer
5. Why Use Insurance and Indemnity Clauses?
6. Types of Indemnity Clauses
7. Points to Look for in Indemnity Agreements
8. Types of Insurance to Require
9. Risk Management/Insurance Checklist
10. Liability Insurance Clause - PRIMA
11. Liability Insurance Clause - Alternative
12. General Liability Endorsement - PRIMA
13. Commercial General Liability Endorsement - Alternative
14. Property Insurance Standard Clause
15. Certificate of Insurance
16. Protection Scale
17. Dealing with Non-Compliance
19. Nine Points to Know about Accepting Certificates of Insurance

References
RISK TREATMENT TECHNIQUES

Risk

Finance
- Insure
- Self-Insure

Control
- Prevention
- Claim Management

Avoid
- Contractual Transfer
OVERVIEW OF PROCESS FOR USING INDEMNITY AND INSURANCE CLAUSES

District Prepares Bid Specifications

Specifications Contain Preferred:
- Indemnity Clause
- Ins. Requirement

District Receives Bid With Indemnity and Insurance Exceptions Noted

Contract Contains Indemnity Clause and Insurance Requirement as Negotiated with Contractor

Contract is Signed

Contractor Provides Evidence of Insurance

Work Commences
1. Required by law.

2. Transferee can handle better:
   a. Experience.
   b. Financial capacity.
   c. Position to control.

3. Protect the district's insurance or self-insurance program.
1. Incompetent contractor.

2. Public nuisance from the nature of the project.


4. Contractor does not buy coverage you intended.

5. Breach of insurance policy by contractor.

6. Policy cancelled.

7. Other insurance clause.

8. Contractor employee claim.


11. Contractor failure.

12. Insurance company failure.
WHY USE INSURANCE AND INDEMNITY CLAUSES?

1. Indemnity Clause

- States who is responsible for injury or damage arising out of the work performed.
- Usually does not contain a dollar limit.
- Usually is not limited in the types of injury or damage to which it applies.
- Provides an avenue for recovery if contractor’s insurance is invalid.
- Indemnitee - Person or organization held harmless (usually your district).
- Indemnitor - Person or organization (usually the contractor) agreeing to indemnify the other party to the contract (the indemnitee).

2. Insurance Requirement

- Specifies the types and limits of insurance contractor must buy.
- Helps ensure that contractor has funds available to pay liability assumed under indemnity clause.
- Can give the district some specific rights under contractor’s policies.

3. Points to Consider

- The legal enforceability of the transfer.
- The abilities of the parties to manage risk.
- The price of the transfer.
1. *Limited Form*. Requires contractor to be responsible for its own negligence.

   Sample Clause: "Contractor agrees to hold harmless and indemnify District for liability arising out of the negligent activities of Contractor.

2. *Intermediate Form*. Requires contractor to be responsible for its own negligence and the joint negligence of the Contractor and the District.

   Sample Clause: "Contractor agrees to hold harmless and indemnify the District for all liability arising out of the project, except that arising out of the sole negligence of the District."

3. *Broad Form*. Requires contractor to be responsible for all liability arising out of the project (including the sole negligence of the District).

   Sample Clause: "Contractor agrees to hold harmless and indemnify District for all liability arising out of the project."
The indemnity agreement should apply to:

1. Acts of the:
   - Contractor.
   - Contractor’s employees and agents.
   - Contractor’s subcontractors.

2. The sole negligence of the contractor and the joint negligence of the contractor and the district.

3. All types of injury or damage arising out of the project, not just bodily injury and property damage.

4. Damages or injury to:
   - Contractor’s employees and agents.
   - Contractor’s property.
   - Third parties.

## TYPES OF INSURANCE TO REQUIRE

<table>
<thead>
<tr>
<th>Type of Contract</th>
<th>Comm'l General Liab.</th>
<th>Business Auto Liab.</th>
<th>Prof. Liab.</th>
<th>Aircraft and Airport Liab.</th>
<th>Fire and Extended Coverage or All Risk</th>
<th>Workers' Compensation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction Contract* (new construction)</td>
<td>✓</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>Lease (tenant of entire building or ground lease with building reverting to district)</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>Professional Service Contract (architects, engineers, doctors, etc.)</td>
<td>✓</td>
<td>•</td>
<td>✓</td>
<td></td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>Airline, FBO or Aircraft Transport</td>
<td>•</td>
<td></td>
<td>✓</td>
<td></td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>Transportation Contractor or where contract requires substantial use of automobiles</td>
<td>✓</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
<td>✓</td>
</tr>
</tbody>
</table>

✓ = Coverage normally required in contract situation.

• = Coverage often (but not always) required in contract situation.

* = For construction projects exceeding $100 million or more in construction costs, District should evaluate whether it should arrange commercial general liability and workers' compensation for all contractors and subcontractors on-site. This is called an owner controlled or wrap-up program.
### RISK MANAGEMENT/INSURANCE CHECKLIST

<table>
<thead>
<tr>
<th>Author of Contract</th>
<th>Telephone Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract Description</td>
<td>Amount</td>
</tr>
<tr>
<td>Bureau/Division Responsible</td>
<td></td>
</tr>
<tr>
<td>Location of Project (street address or address range)</td>
<td></td>
</tr>
</tbody>
</table>

Please indicate which of the following best describes the major type of contract:

<table>
<thead>
<tr>
<th>✓</th>
<th>Construction</th>
<th>✓</th>
<th>Repair and Maintenance</th>
<th>✓</th>
<th>Engineering Professional</th>
</tr>
</thead>
<tbody>
<tr>
<td>✓</td>
<td>Buildings and Structures</td>
<td>✓</td>
<td>Buildings</td>
<td>✓</td>
<td>Environmental Study/Management</td>
</tr>
<tr>
<td></td>
<td>Installation of Facilities</td>
<td></td>
<td>Equipment</td>
<td></td>
<td>Inspection</td>
</tr>
<tr>
<td></td>
<td>Electrical</td>
<td></td>
<td>Piers/Docks</td>
<td></td>
<td>Construction Manager</td>
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<td></td>
<td>Plumbing</td>
<td></td>
<td>Vehicles</td>
<td></td>
<td>Design</td>
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<td></td>
<td>Heat/Ventilating and Air Conditioning</td>
<td>✓</td>
<td>Other Services</td>
<td>✓</td>
<td>Topographical/Utility Survey</td>
</tr>
<tr>
<td>✓</td>
<td>Other Professional</td>
<td>✓</td>
<td>Cleaning</td>
<td>✓</td>
<td>Marine Services</td>
</tr>
<tr>
<td>✓</td>
<td>Expert/Study Only</td>
<td>✓</td>
<td>Inspection/Assessment</td>
<td></td>
<td>Dredging</td>
</tr>
<tr>
<td>✓</td>
<td>Medical Service</td>
<td>✓</td>
<td>Armored Car</td>
<td></td>
<td>Towing of Vessels</td>
</tr>
<tr>
<td>✓</td>
<td>Legal Service</td>
<td>✓</td>
<td>Collection Agency</td>
<td></td>
<td>Marine Survey</td>
</tr>
<tr>
<td></td>
<td></td>
<td>✓</td>
<td>Gas Detection</td>
<td></td>
<td>Maintenance and/or Repair of Vessels</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>Computer</td>
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<td></td>
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</tbody>
</table>

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ADVANCED RISK MANAGEMENT TECHNIQUES, INC
### RISK MANAGEMENT/INSURANCE CHECKLIST

Please indicate whether each of the following applies and enclose sections of contract referring to these special exposures.

<table>
<thead>
<tr>
<th>Yes (✓)</th>
<th>No (✓)</th>
<th>Hazard</th>
<th>Contract</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Operations in area with possible mercury, PCB, HZS, asbestos, methane, gas or other toxic/explosive or hazardous materials</td>
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<td>Excavation or construction within 50 feet of any rail facility, lake, stream, pond or other waterway</td>
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<td>Excavation in public streets</td>
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<td>Blasting/utilization or storage of any explosives</td>
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<td>Utility support and protection</td>
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<td>Access to any district non-owned property or property not under district control</td>
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<tr>
<td></td>
<td></td>
<td>Use of any watercraft or marine equipment or of any aircraft</td>
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<tr>
<td></td>
<td></td>
<td>Provision of vehicle, watercraft or aircraft</td>
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<td></td>
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<td>Tunneling</td>
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<td></td>
<td></td>
<td>Pile driving</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Use of any district tools and equipment by contractor</td>
<td></td>
</tr>
</tbody>
</table>
LIABILITY INSURANCE CLAUSE - PRIMA

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

A. MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001, Ed. 11/88)

2. Insurance Services Office form number CA 0001 (Ed. 6/92) covering Automobile Liability, code 1 "any auto."

3. Workers' Compensation insurance as required by the Labor Code of the State of _________ and Employers Liability insurance.

B. MINIMUM LIMITS OF INSURANCE

Contractor shall maintain limits no less than:

1. Commercial General Liability: $1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. The general aggregate limit shall apply separately to this project/location or the general aggregate shall be twice the required occurrence limit.

2. Automobile Liability: $1,000,000 combined single limit per accident for bodily injury and property damage.

3. Workers' Compensation and Employers Liability: Workers' compensation limits as required by the Labor Code of the State of _________ and Employers Liability limits of $1,000,000 per accident.
LIABILITY INSURANCE CLAUSE - PRIMA

C. DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductibles or self-insured retentions must be declared to and approved by the Agency. At the option of the Agency, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Agency, its officers, officials, employees and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D. OTHER INSURANCE PROVISIONS

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages

   a. The Agency, its officers, employees and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the Contractor including the insured's general supervision of the Contractor; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor, or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the Agency, its officers, officials, employees or volunteers.

   b. The Contractor's insurance coverage shall be primary insurance as respects the Agency, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Agency, its officers, officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute to it.

   c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Agency, its officers, officials, employees or volunteers.

   d. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
LIABILITY INSURANCE CLAUSE - PRíMA

2. Workers' Compensation and Employers Liability Coverage

The insurer shall agree to waive all rights of subrogation against the District, its officers, officials, employees and volunteers for losses arising from work performed by the Contractor for the Agency.

3. All Coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Agency.

E. ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with a Best's rating of no less than A:VII.

F. VERIFICATION OF COVERAGE

Contractor shall furnish the Agency with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms provided by the Agency. Where by statute, the Agency's workers' compensation-related forms cannot be used, equivalent forms approved by the Insurance Commissioner are to be substituted. All certificates and endorsements are to be received and approved by the Agency before work commences. The Agency reserves the right to require complete, certified copies of all required insurance policies at any time.

G. SUBCONTRACTORS

Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

3. Insurance

Contractor shall obtain insurance of the types and in the amounts described below.

3.1 Commercial General Liability Insurance. Contractor shall maintain occurrence version commercial general liability insurance or equivalent form with a limit of not less than $1,000,000 each occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two times the occurrence limit. Such insurance shall:

3.1.1 Include the Agency, its officials, officers and employees as insureds with respect to performance of Services. The coverage shall contain no special limitations on the scope of protection afforded to the above-listed insureds.

3.1.2 Be primary with respect to any insurance or self insurance programs covering the Agency, its officials, officers and employees.

3.2 Business Automobile Liability Insurance. Contractor shall maintain business automobile liability insurance or equivalent form with a limit of not less than $1,000,000 each accident. Such insurance shall include coverage for owned, hired and non-owned automobiles.
LIABILITY INSURANCE CLAUSE - ALTERNATIVE

3.3 Workers' Compensation Insurance. Contractor shall maintain workers' compensation insurance with statutory limits and employers' liability insurance with limits of not less than $1 million each accident.

3.4 Other Insurance Requirements. Contractor shall:

3.4.1 Prior to commencement of Services, furnish the Agency with properly executed certificates of insurance which shall clearly evidence all insurance required in this Section 3 and provide that such insurance shall not be cancelled, allowed to expire or be materially reduced in coverage except on 30 days' prior written notice to the Agency.

3.4.2 Provide certified copies of endorsements and policies if requested by the Agency in lieu of or in addition to certificates of insurance.

3.4.3 Replace certificates, policies and endorsements for any such insurance expiring prior to completion of Services.

3.4.4 Maintain such insurance from the time Services commence until Services are completed.

3.4.5 Place such insurance with insurers licensed to do business in California and having A.M. Best Company ratings of no less than A:VII.
GENERAL LIABILITY ENDORSEMENT - PRIMA

("the Agency")

Attn: ____________________________

A. POLICY INFORMATION

Endorsement #_____

1. Insurance Company ____________________________ : Policy Number ____________________________

2. Policy Term (From) ___________ (To) ___________ ; Endorsement Eff. Date: ______

3. Named Insured ____________________________

4. Address of Named Insured ____________________________

5. Limit of Liability Any One Occurrence/Aggregate $__________________________ / $______________

   Commercial General Liability Aggregate (check one):

   Applies "per location/project"
   Is twice the occurrence limit

6. Deductible or Self-Insured Retention (Nil unless otherwise specified): $__________________________

7. Coverage is equivalent to (check one):

   Comprehensive General Liability form GL0002 (Ed 1/73)
   Commercial General Liability "occurrence" form CG0001
   Commercial General Liability "claims made" form CG0002

8. Bodily Injury and Property Damage Coverage limit is:

   a. "Claims made" ________________
   b. "Occurrence" ________________

   If claims made, the retroactive date is ____________________________

B. POLICY AMENDMENTS

This endorsement is issued in consideration of the policy premium. Notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any other endorsement attached hereto, it is agreed as follows:

1. INSURED. The Agency, its elected or appointed officials, employees and volunteers are included as insureds with regard to damages and defense of claims arising from: (a) activities performed by or on behalf of the Named Insured, (b) products and completed operations of the Named Insured, or (c) premises owned, leased or used by the Named Insured.
2. CONTRIBUTION NOT REQUIRED. As respects: (a) work performed by the Named Insured for or on behalf of the Agency; or (b) products sold by the Named Insured to the Agency; or (c) premises leased by the Named Insured from the Agency, the insurance afforded by this policy shall be primary insurance as respects the Agency, its elected or appointed officers, officials, employees or volunteers; or stand in an unbroken chain of coverage excess of the Named Insured's scheduled underlying primary coverage. In either event, any other insurance maintained by the Agency, its elected or appointed officers, officials, employees or volunteers shall be in excess of this insurance and shall not contribute with it.

3. SCOPE OF COVERAGE. This policy, if primary, affords coverage at least as broad as:

   (1) Insurance Services Office form number GL 0002 (Ed. 1/73), Comprehensive General Liability Insurance and Insurance Services Office form number GL 0404 Broad Form comprehensive General Liability endorsement; or

   (2) Insurance Services Office Commercial General Liability Coverage, "occurrence" for CG 0001 or "claims made" form CG 0002; or

   (3) If excess, affords coverage which is at least as broad as the primary insurance forms referenced in the preceding sections (1) and (2).

4. SEVERABILITY OF INTEREST. The insurance afforded by this policy applies to each insured who is seeking coverage or against whom a claim is made or a suit is brought, except with respects to the Company's limit of liability.

5. PROVISIONS REGARDING THE INSURED'S DUTIES AFTER ACCIDENT OR LOSS. Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the Agency, its elected or appointed officers, officials, employees or volunteers.

6. CANCELLATION NOTICE. The insurance afforded by this policy shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail return receipt requested has been given to the Agency. Such notice shall be addressed as shown in the heading of this endorsement.

C. INCIDENT AND CLAIM REPORTING PROCEDURE

Incidents and claims are to be reported to the insurer at:

Attn: ____________________________  (Title)

______________________________  (Department)

______________________________  (Company)

______________________________  (Street Address)

______________________________  (City)

______________________________  (State)

______________________________  (Zip)

______________________________  (Telephone Number)

ADVANCED RISK MANAGEMENT TECHNIQUES, INC
D. **SIGNATURE OF INSURER OR AUTHORIZED REPRESENTATIVE OF THE INSURER**

I, ___________________________ (print/type name), warrant that I have the authority to bind the below listed insurance company and by my signature hereon do so bind this company.

________________________________________
SIGNATURE OF AUTHORIZED REPRESENTATIVE (original signature required on endorsement furnished to the Agency)

ORGANIZATION: __________________________ TITLE: __________________________

ADDRESS: __________________________ TELEPHONE: ( ) __________________________
COMMERCIAl GENERAL LIABILITY ENDORSEMENT - ALTERNATIVE

This endorsement modifies insurance provided under the following:

Commercial General Liability Coverage Part

Policy No. ____________________

Endorsement Effective Date ________________

SCHEDULE

Name of Person or Organization: ____________________________________________

It is agreed that the policy is amended as follows:

1. **Who is an Insured:** The person or organization shown in the schedule is included as an insured, but only as respects liability arising out of "your work" for that insured by or for you.

2. **This Insurance Applies as Primary:** This insurance is primary as respects any other insurance or a self-insurance program protecting the interests of the person or organization shown in the schedule.

3. **Cancellation or Non-Renewal:** We may cancel or non-renew this coverage part by mailing or delivering to the person or organization shown in the schedule written notice at least 30 days before the effective date of cancellation or non-renewal in coverage.

______________

Insurer

______________

Authorized Agent
PROPERTY INSURANCE STANDARD CLAUSE

Contractor shall purchase a standard form fire and extended coverage property insurance policy to insure:

(Specify facility to be insured)

Insurance will be written in an amount equal to at least 90% of the current replacement cost of the facility. Coverage shall be written on a replacement cost basis. The insurance policy will contain the following clauses:

A. "This insurance shall not be cancelled, limited in scope of coverage or non-renewed until after 30 days’ written notice has been given to the District."

B. All rights of subrogation are hereby waived against the District, its officers, employees, and agents.

C. A standard loss payee clause naming the District as loss payee.

Contractor agrees to deposit with the District on or before the effective date of this contract, certificates of insurance necessary to satisfy the District that the insurance provisions of this contract have been complied with and to keep such insurance in effect and the certificates thereof on deposit with the District during the entire term of this contract.
**CERTIFICATE OF INSURANCE**

**COMPUTER OF INSURANCE**

__THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND
CONFFSS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE
DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THESE POLICIES BELOW.__

**COMPANIES AFFORDING COVERAGE**

<table>
<thead>
<tr>
<th>LETTER</th>
<th>COMPANY</th>
<th>LETTER</th>
<th>COMPANY</th>
<th>LETTER</th>
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<tbody>
<tr>
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<td>A</td>
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<td>B</td>
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</tbody>
</table>

**COVERAGES**

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.

<table>
<thead>
<tr>
<th>CO</th>
<th>TYPE OF INSURANCE</th>
<th>POLICY NUMBER</th>
<th>POLICY EFFECTIVE DATE</th>
<th>POLICY EXPIRATION DATE</th>
<th>LIMITS</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>GENERAL LIABILITY</td>
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<tr>
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<td>COMMERCIAL GENERAL LIABILITY</td>
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<td>CLAIMS MADE OCCUR</td>
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<td>OWNER'S &amp; CONTRACTOR'S PROT.</td>
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<td>AUTOMOBILE LIABILITY</td>
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<td>HIRED AUTOS</td>
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<td>NON-OWNED AUTOS</td>
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<td>GARAGE LIABILITY</td>
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<td>DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS</td>
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**CERTIFICATE HOLDER**

The issuing company will endeavor to mail _days_ written notice to the certificate holder named to the left. But failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives.

BEST COPY AVAILABLE
PROTECTION SCALE

Contract Requirement

No Indemnity
No Insurance

Indemnity
No Insurance
or
No Indemnity
Insurance

Indemnity Insurance

Indemnity Insurance
Additional Insured

Least
Protection to Owner
Most

Compliance Monitoring

No Monitoring

Flexible Monitoring

Strict Monitoring

ADVANCED RISK MANAGEMENT TECHNIQUES, INC
DEALING WITH NON-COMPLIANCE

1. Learn exactly what the objection is and learn about it early.

2. Reduce the required limit (e.g., from $1 million to $500,000).

3. Reduce the scope of coverage required.

4. Eliminate some special requirements:
   a. District insurance is excess.
   b. Notice of non-renewal.
   c. District as an insured on professional liability insurance.

5. Prepare specifications so they allow waiving requirements, if in District's best interest.
GUIDELINES FOR CONTRACT INSURANCE PROVISIONS

Do . . .

- Say it precisely and say it once.
- Use terms common to current insurance industry usage.
- Update language at least annually.
- Research all objections to language in advance.
- Obtain limits that apply separately to each agency location/contract.
- Set up a system to ensure compliance.
- Obtain evidence before the job begins.
- Consider the cost of compliance.

Don’t . . .

- Ask for coverage that guarantees every liability assumed in the contract.
- Include sensitive environmental work with routine work in same contract.
- Tie liability limits to size of contract only.
NINE POINTS TO KNOW ABOUT ACCEPTING CERTIFICATES OF INSURANCE

- The information on the certificate shows only what coverage applies as of the date on the certificate. It conveys no rights to the certificate holder.

- Many contractors do not provide renewal certificates in a timely fashion as policies expire. That could mean a renewal problem where no coverage is in force. A loss is not the way to find out. Requiring contractors to provide a renewal certificate at least 15 days before expiration is a safer method.

- There should be no confusion on what job or operations a certificate applies to. Some of the better ways to do that is to cite a contract number or a job location as a way of tying the insurance to the contracted work. The description block near the bottom of the certificate should not be left empty.

- Certificate notice of cancellation wording that states the insurer will "endeavor to" provide notice to the certificate holder only means the insurer will try to send notice. There is no obligation that the insurer send notice, even if the certificate's "endeavor to" wording is stricken. Only a policy endorsement can create a notice obligation on the insurer.

- Be aware that sole proprietors have the legal right not to buy workers' compensation coverage for themselves. But this does not mean they are prohibited from pursuing you for workers' compensation benefits—especially when they are clearly under your direction and control.

- Being added as an "additional" insured helps insulate the certificate holder's liability insurance from contractor-generated claims. But remember, it only affords the liability protection that exists in the policy, and additional insured status can be granted only by policy endorsement—not a notation on the certificate.

- There should be no special limitations on an additional insured status. For example, a restriction which ties the additional insured status only to claims arising out of the sole negligence of the contractor does not confer additional insured status at all.
NINE POINTS TO KNOW ABOUT ACCEPTING CERTIFICATES OF INSURANCE

- Unless special policy endorsements apply, aggregate limits shown in a certificate are the total limits available for all losses from all operations of the contractor (or other named insured) during the policy term. That includes any losses from:
  - Other projects of the named insured.
  - All premises rented or owned.
  - Liability coverage contractually provided to other certificate holders.

The limits and coverage extensions required in your contract provisions can make a difference. Ask for liability limits that apply per project.

- The existence of insurance does not guarantee protection will be available for all contracted services. Two notable areas usually not covered are:
  - Pollution
  - Breach of contract

- Professional liability losses are usually not immediate. Most architect and engineer losses, for example, occur or come to light long after work is completed. Professional liability coverage is virtually always provided on a "claims made" basis. Claims made policies only apply to claims which are made during the policy period. Making sure insurance is in force during the contract does not guarantee insurance will be in force five years later when a building collapses, for example. To be sure insurance is in force for future losses, certificates must be reviewed for years to come. This may be impractical. The most workable protection is to contract with firms having an established reputation.

That's ten points to be aware of, not nine. It's not that we can't count, it's just that we tend to give the extra effort that makes a difference.

If we can provide any further information on certificates, or provide you with certificate review services, contract review or any other type of risk management service, please call or write:

Charles L. Young, Jr., ARM
ARM Tech
23701 Birtcher Drive
Lake Forest, CA 92630-1783
(714) 472-8324

ADVANCED RISK MANAGEMENT TECHNIQUES, INC
The Additional Insured Book, by Malecki & Gibson, International Risk Management Institute, Inc., Dallas, Texas.

Insuring the Lease Exposure, by Brooks & Malecki, The National Underwriters Company, Cincinnati, Ohio.

Practical Risk Management, by David Warren, Oakland, California.

The Hold Harmless Agreement, by Georgia Chapter of Society of CPCU, The National Underwriter Company, Cincinnati, Ohio.

Construction Risk Management, by Farmer, McIntyre and Gibson, International Risk Management Institute, Inc., Dallas, Texas.
INSURER: County failed to check out second underwriter

FROM 1 article published in The Orange County Register on July 19, which reported the subcontractors' lawsuits.

"We've revised our standards as a result of the article," Walsh said. Nevertheless, she attributed some of the poor oversight to the county Risk Management Department's reliance on a single clerk to perform the required checks on bonding companies.

"We should never have left the process in the hands of one person," Walsh said.

The clerk apparently did not check with the state Department of Insurance. That department's staff told the county it would accept its bond. The county accepted the bond only to later learn that Melchizedek was California Pacific's alleged legal home in September, 1991, when Orange County accepted its bond. Inexplicably, the actual bond given to the county, however, cited the Turks & Caicos Islands in the British West Indies as California Pacific's legal home.

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That's the home of First Assurance, the company that became legally responsible for finishing the firehouse.

First Assurance, with county approval, bought the $73,000 bond from California Pacific to guarantee payment to subcontractor Hicks Mechanical Contractors of Orange. The subcontractor had refused to perform further work after posting a legal "stop notice" in Orange County Superior Court. Claiming First Assurance owed it $64,000, the hitch: California Pacific never was a legitimate insurance company.

As with First Assurance, California Pacific did not meet any of the usual standards used to evaluate the insurers who underwrite surety bonds. It was a foreign insurance company that wrote a completion bond for the firehouse. The company was listed in the annual list of federally approved insurers issued by the U.S. Treasury Department.

Although it claimed $469 million in assets on a 1991 financial statement, California Pacific was unable to prove to California regulators it possessed any net worth. That's why the state Department of Insurance barred it from the state in March.

"Absolutely no documentary evidence was submitted in response to the department's request to substantiate any accounting item," a state lawyer wrote California Pacific President Jeff H. Reynolds on March 19. "Not even a bank deposit slip nor even a copy of a stock certificate on an investment was submitted."

Further, the Newport Beach lawyer hired by First Assurance to oversee the fire station construction, Phillip Greer, has asked an Orange County Superior Court judge to allow him to withdraw from representing the company because he hasn't been paid.


Plumbing contractor Hicks is outraged. "I can't believe they took that second bond," he said. "They floated around those bonds that nobody could collect on. We have to be more careful in the future."

GOVERNMENT: Officials' failure to check out a second insurer compounds problems dogging an Irvine firehouse project.

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Twice burned: Insurance blunder costs O.C., again

GOVERNMENT: Officials' failure to check out a second insurer compounds problems dogging an Irvine firehouse project.

By MARC LIFSHER
The Orange County Register

SACRAMENTO - Orange County officials admit they made a mistake by allowing an unlicensed insurance company to take over management of a $1 million firehouse-construction project from a bankrupt contractor.

Would you believe they made the same mistake twice? Not only did the county fail to check the credentials of First Assurance Casualty Co. Ltd. of the Turks & Caicos Islands, it also fails for bankruptcy in Houston. County officials allow Edwards to buy another completion bond from a second unlicensed Turks & Caicos company, First Assurance & Casualty Co.

Edwards becomes insolvent, files for bankruptcy. Orange County supervisors vote to allow the bond insurer, First Assurance, to act as the contractor and finish the construction project.

Edward's lawyer asks a Judge to relieve him from representing the company because he has not been paid.


Plumbing contractor Hicks is outraged. "I can't believe they took that second bond," he said. "They float around these bonds that nobody can collect on and are no good. I don't have the slightest idea why they don't know how to check them out."

CHRONOLOGY OF A TROUBLED PROJECT: WOODBRIDGE FIRE STATION No. 36

F-Mid-1991: Orange County signs contract with The Edwards Group, a Jutin contractor, to build a $1 million fire station at 310 East Yale Loop in Irvine.

▸ December 1991: The Edwards Group files for Chapter 13 protection from creditors in U.S. Bankruptcy Court. Coincidentally, the unlicensed insurance company that wrote a completion bond for the project, Winston Hill Assurance Co. Ltd. of the Turks & Caicos Islands, also files for bankruptcy in Houston. County officials allow Edwards to buy another completion bond from a second unlicensed Turks & Caicos company, First Assurance & Casualty Co.

▸ September 1992: Subcontractors file legal notices with county, claiming they had not been paid for work on the fire station.

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▸ November 1992: County allows First Assurance to buy another bond from a foreign insurance company, California Pacific Bankers and Insurance, to cover amount of money in dispute with a subcontractor, California Pacific, at the time, claimed to be legally licensed by a fictitious nation called the Dominon of Melchizedek.

▸ March 1993: State Department of Insurance prohibits California Pacific from doing business in California.

▸ April 1993: Regulators bar First Assurance from operating in California.

▸ August 1993: First Assurance's lawyer asks a Judge to relieve him from representing the company because he has not been paid.

CHRONOLOGY: Fire station has been troubled project.
Contractor’s policy excludes cover for additional insured

Robert Enoex, chief counsel for the Illinois Insurance Department.

The department plans to file an amicus brief on behalf of the park district because the endorsement makes the coverage “worthless,” he said. In addition, the National Union policy, an endorsement that barely mentions involving is never filed with regulators for review, as required under the state’s Electric Insurance Act, he added.

The Public Risk Management Assem may also file an amicus brief.

Following the accident, Mr. Clausens received medical coverage and compensation for lost wages under the Worker’s Supplemental Disability Act. He was employed by the Glenview Park District.

Then his wife and legal guardian, Patricia Clausens, filed a lawsuit against the park district in 1991 for negligence and violations of the Illinois Structural Work Act and loss of consortium.

After the suit was filed, the park district “was surprised” to learn that National Union was defending it under the endorsement rights of interests in the job site. Betty Kutska, executive director of the Park District Risk Management Agency in Lisle, Ill., said insurers for the Glenn Park District and 169 others in the state are not aware of the endorsement change. Ms. Kutska, said. Several plan to check their policies to be sure they are adequately covered.

The endorsement excluded public policy because it is so broad that it essentially deprives an insured of any coverage the policy purports to provide. Mr. DiCiani said.

Having the endorsement in force means that the park district is covered only for “rare” cases of “vicarious” liability, such as when an employee is found responsible for its employer’s actions, he said.

If the state Supreme Court uphold the endorsement exclusion and the park district plans to ask that the case be sent back to the circuit court to determine whether the district was negligent. The district will also ask that National Union’s endorsement be continued to defend the park district until such a finding is made.

Several risk managers for major public utilities in Illinois were “applied” when told of the case. Mr. Kutska said. Several plans to check certificates of insurance from contractors in their files to see if National Union is the insurance and if so, to get copies of underlying policies to see if the blanket endorsement is included, she said.

“I haven’t seen this type of endorsement,” said Bob Ewenberg, risk manager for Virginia Beach, Va., and a past president of the Risk & Insurance Management Society Inc. “It’s a very unusual endorsement,” added Donald S. Malecki, a risk management consultant with D.S. Malecki & Associates Inc. in Cincinnati.

While many insurers “have a pre-conceived notion” that an additional insured is only protected for vicarious liability, that is not always the case, they added. Mr. Malecki, who has written a book on insurance, warned risk managers that endorsements may become more restrictive in the future.

J. Orofino Gallagher Jr., president of Arthur J. Gallagher Co. in Chicago, Ill., agreed that this general area of insurance is already disputed. Gallagher was National Domestic General’s broker.

“After all, the insurance company apparently used the controversial endorsement ‘sparingly’ widely in Illinois, and Mr. DiCiani, the park district’s attorney, basing his comments on a half-dozen telephone calls he has received from attorneys engaged in litigation over the endorsement.

National Union would not comment. However, in court briefs, the insurer, said, “Civil law’s resolution for this is not intended to be limited to such a slight risk is directed at the wrong party. Glenview’s dispute is not with National Union, but the Illinois Supreme Court.

The park district is also suing National Domestic. charging that the terms of its insurance did not meet the district’s requirements.

“Historically, risk managers have accepted certificates of insurance and tuck them away in a file,” noted Mr. Malecki, the insurer’s attorney. “To make sure they are adequately covered, risk managers should obtain a copy of the contractor’s endorsement adding them as an additional insured to its CGL policy or, better yet, a copy of the underlying policy, he advised.

However, Mr. Kutska of the self-insurance pool said it would be ‘extremely burdensome’ for a risk manager to obtain a policy each time an entity hired a contractor—an event that occurs thousands of times a year.

To prevent similar disputes in the future, the pool recently revised its insurance specification recommendations to members to outlaw such language.

The park district pool’s language states that liability coverage should be at least as broad as Insurance Services Office Inc.’s occurrence forms GC 0001 1180, GL 0002 or GL 0034.

The pool also recommends entirely deleting ISO endorsements CG 21 14 11 88 and CG 21 39 11 88, or ‘other such endorsement or policy provision which limit contractual liability.’