

Construction Contracting Series

Contractual Liability – The Crown Jewel of a Contractor’s General Liability Insurance

Hidden away in the depths of a contractor’s general liability insurance policy is a real crown jewel. That crown jewel is the contractual liability coverage component and it is highly coveted by your client who may be an Owner, a General Contractor or an EPC contractor. So how do they try to mine this crown jewel out of a contractor for their own use? And, at your expense, of course.

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Material suppliers, fabricators, subcontractors and contractors are today routinely required by the terms of the contracts they are required to sign to name the Owner, and/or his General Contractor, and/or his EPC contractor and all of their employees, agents, subsidiaries, representatives and perhaps a host of other possibly unsafe and unknown third parties as additional insureds on contractor’s general liability insurance policies. There’s a very good reason for this, at least from the client’s perspective.

Let’s Look at the Process

Clients really want broad and intermediate form indemnities in their contracts. They want these types of indemnities in order to lay off by contract their financial liability, and their defense costs, for claims arising out of bodily injury and property damage caused by their own negligence to lower tier material suppliers, fabricators, subcontractors and contractors involved in their projects. A limited form indemnity found today in a construction or construction related contract is far rarer today than finding a prehistoric coelacanth in a backyard goldfish pond.

But, there’s a problem here for clients. You see, an indemnity is a lot of things, but it is basically a reimbursement contractual obligation.

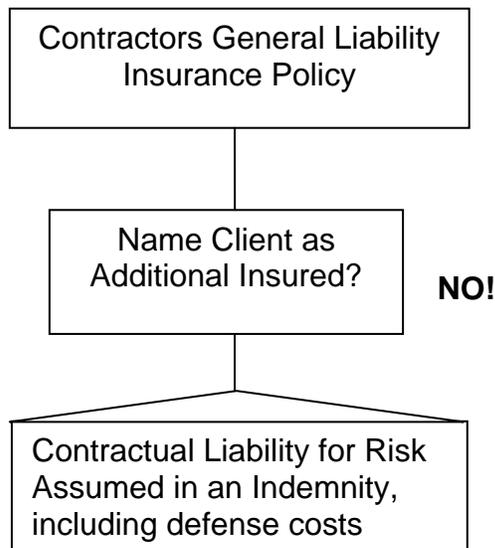
Scenario One: Broad or intermediate form indemnity only in the contractor’s construction contract, no requirement to add the client as an additional insured on contractor’s general liability insurance policy. In the event of a claim against the client that he alleges to have arisen out of the contractor’s work, he will try to get the contractor to, at least in the first instance, defend him against the claim as that is an apparent obligation in the broad or intermediate form indemnity clause in the contract. Smart contractors say “No, the claim didn’t arise out of our work, you were totally at blame and, as such, we are not going to even consider paying for your defense costs much less any subsequent award of damages”.

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The letter from the client demanding indemnity and defense is crumpled up and tossed from the three point line into the center of a nearby garbage can.

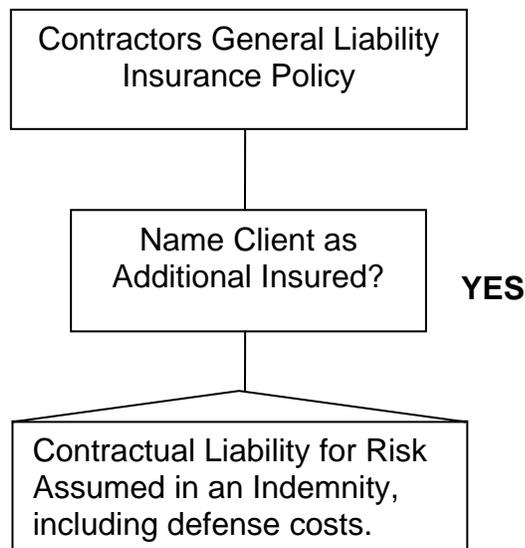
Scenario Two: Broad or intermediate form indemnity agree to in the contractor's construction contract plus requirement to add client (and perhaps other third parties) as an additional insured on contractor's general liability insurance policy. In the event of a claim against the client that he alleges to have arisen out of the contractor's work, the client now can contact contractor's insurance company and demand an **immediate defense** of the claim. (Contractor, just remember when you name someone as an additional insured they get all the benefits of the policy just as you do as the Named Insured) And to add insult to injury, the contractor's insurance company would have to cover the financial liability transferred in the indemnity clause, including perhaps the financial liability arising out of the sole negligence of the client, because contractor's general liability policy has coverage for **contractual liability**. Contractual liability provides coverage for the risk assumed in indemnities, including defense costs, and that's why it is the **CROWN JEWEL** of contractor's general liability insurance policy and is very highly coveted by the client. (but only if contractor agrees to naming the client as an additional insured).

Scenario One



**CROWN JEWEL
PROTECTED**

Scenario Two



**CROWN JEWEL
NOT PROTECTED!**

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Contractors remember: It's your company's insurance policy and should, since you pay for it, be used solely for your company's benefit, not for the benefit of others for free by them being added as an additional insured. Clients can buy their own insurance to meet their own needs.

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