



A Simon Says paper:

RISK QUANTIFICATION – HOW MUCH GENERAL LIABILITY INSURANCE IS ENOUGH?

I have been discussing the adequacy of general liability limits with many clients we insure over the past several years. Quantifying your third party liability exposure is much more complicated than quantifying property (installation) amounts: in fact it's quite a *juggling* game. For property insurance you can specifically accumulate the labour and material costs that make up your estimated contract price; whereas, it is far more complicated to quantify your maximum exposure to loss when it comes to *third party* property damage and bodily injury claims. Compounding this even more is the cost of legal service that is almost always a factor on larger general liability claims.

Many of you feel that purchasing general liability insurance limits to the amount required in contract meets your obligations, by doing so you potentially expose your company to self insuring above your insurance limits for larger accidents that may result in third party liability claims against you. The question then is *can your corporation sustain the self insured amount?* Very often the words “at least” or “not less than” are inserted in front of the required limit of insurance stated in contract insurance specifications (see Example 1 from CCDC 41 below). This sends a signal that the required limit of insurance is not necessarily your *maximum* liability exposure.

Example 1

1. General liability insurance shall be with limits of **not less than** \$5,000,000 per occurrence, an aggregate limit of not less than \$5,000,000 within any policy year with respect to completed operations, and a deductible not exceeding \$5,000. The insurance coverage shall not be less than the insurance provided by IBC Form 2100 (including an extension for a standard provincial and territorial form of non-owned automobile liability policy) and IBC Form 2320. To achieve the desired limit, umbrella or excess liability insurance may be used. Subject to satisfactory proof of financial capability by the *Contractor*, the *Owner* may agree to increase the deductible amounts.

Please review **12.1 – INDEMNIFICATION** carefully in the **CCDC 2** contract. Note under 12.1.2.1 (Example 2 below) - in the event of loss (within the Owner: Contractor relationship) it appears that the required “contract” insurance limit applies – (presently \$5MM per example above).

Example 2

12.1.2 The obligation of either party to indemnify as set forth in paragraph 12.1.1 shall be limited as follows:

.1 In respect to losses suffered by the *Owner and the Contractor* for which insurance is to be provided by either party pursuant to GC 11.1 – INSURANCE, the general liability insurance limit for one occurrence as referred to in CCDC 41 in effect at the time of bid closing.

12.1.2.2 (Example 3 below) - Relates to losses for which there is no specified contract requirement to insure – there is still *exposure* but it is *contract price or \$2MM but no greater than \$20MM*. Pollution insurance might as an example to fit into this as it is not a requirement in the CCDC 2 Standard form.

Example 3

12.1.2 The obligation of either party to indemnify as set forth in paragraph 12.1.1 shall be limited as follows:

.2 In respect to losses suffered by the *Owner and the Contractor* for which insurance is not required to be provided by either party in accordance with GC 11.1 – INSURANCE, the greater of the *Contract Price* as recorded in Article A-4 – CONTRACT PRICE or \$2,000,000, but in no event shall the sum be greater than \$20,000,000.

12.1.2.3 (Example 4 below) - Relates to claims advanced by *Third Parties* (not Owner) – for example these could be tenants of the Owner's building including industrial tenants; neighbouring properties etc. Your liability resulting in *Bodily Injury, Sickness, Disease, Death or Destruction of tangible property is unlimited*. Otherwise the limits in 12.1.1.1 and 12.1.2.2 above apply but that does not leave much else as 12.1.2.3 pretty much describes the full scope of coverage supplied by a general liability policy, the last sentence appears to be a “catch all”.

Furthermore, this does not necessarily relieve you or limit your exposure to loss of use claims by third parties (such as a plant shutdown arising from an occurrence resulting from your work) as the definition of Property Damage in a liability policy includes language related to *loss of use* of tangible property, whether injured (*damaged*) or not.

Example 4

12.1.2 The obligation of either party to indemnify as set forth in paragraph 12.1.1 shall be limited as follows:

.3 In respect to claims by third parties for direct loss resulting from bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, the obligation to indemnify is without limit. In respect to all other claims for indemnity as a result of claims advanced by third parties, the limits of indemnity set forth in paragraphs 12.1.2.1 and 12.1.2.2 shall apply.

Continuing the loss of use discussion and in particular regarding Property Damage, a Builder's Risk property policy (refer to CCDC 11.1.1.4 “Broad Form” Property Insurance – *sometimes* referred to as Installation Floater if purely electrical work for example) covers usually the Property only (contract price

comprising labour and materials) - rarely does it include Delay in Start Up Insurance triggered by an insured peril such as a fire. We see Delay in Start Up Insurance more often if the Builder's risk property policy is arranged by the Owner which is not always the case. As such - there remains exposure to you the Contractor for loss of use claims, which is built into the definition of Property Damage in a general liability policy as discussed above. Otherwise for the duration of construction if a Builder's Risk policy is in place, you *should* be covered as an Insured under the Builder's Risk policy for damage to the "project" *provided* the policy affords coverage. Keep in mind "project" may be an addition, a renovation, or even just a roof, that is to say it is not always an entire structure. Builder's risk covers the project only - if there is resultant damage from the Work to areas not considered "project" - you have exposure to a general or third party liability claim. Builder's Risk does not extend beyond the "Project". So if you are working on a roof of a wood frame structure and there is a fire, how much is the building and contents worth beyond the "project"? Compare this to the contract insurance limit of liability insurance required to determine if the contract insurance specification liability insurance amount is enough.

The Builder's Risk is only in effect for the duration of the project subject to conditions outlined in 11.1.1.4 of CCDC 2 and covers the damage to the project during this time. Your general liability insurance should be in force throughout the project to protect you against any property damage losses that travel beyond the project. Beyond this you are contractually obliged to provide General Liability insurance for *Bodily Injury, Sickness, Disease, Death or Destruction of tangible property* claims for 6 years from *Substantial Performance of the Work*.....and incidentally 15 years under the Statute of Limitations.

As a sidebar - when increasing liability limits on a project to comply with contract requirements that stipulate \$10MM limits and then reducing the limit immediately after the work is completed, potentially places you in breach of contract due to the 6 year obligation.

To conclude - it does appear that your liability to the Owner is limited to the amount of insurance required under CCDC 41. You do have added exposure to pollution and other potential causes of loss (insurance not required to purchase) due to 12.1.2.2. In the case of Third Parties - as described - tenants, neighbouring businesses, pedestrians walking by etc. - your liability is **unlimited** for *Bodily Injury, sickness, disease, death or destruction of tangible property*.

Please carefully consider the risks associated with your work in addition to the contract insurance requirements. The risks should really be considered in addition to the contract insurance requirements when determining how much general liability insurance you need.

As a guideline consider the following when assessing the risks associated with your project to determine liability insurance limits:

- Start with Construction cost
- Consider the complexity of work
- Consider consequential loss exposures, (industrial occupancy).
- Renovation vs. New – renovation occupancy and renovation present usually higher risks than new construction.
- Environmental – nearby water bodies/ wetlands other environmentally sensitive exposures near the project.
- On review of above determine whether your operational insurance program limits and coverage are adequate to assume the risk?
- Other issues (Geographic location, Climate, Legal Environment, etc.)

Needless to say – if you are concerned you have inadequate coverage –call your broker to discuss your concerns and make necessary coverage arrangements. If you feel you do work that exposes third parties to bodily injury, property damage or business interruption then you may wish to consider purchasing higher limits of liability insurance than required by contract. Schools, apartment buildings, hotels, retirement residences, commercial and industrial buildings with rented occupancy may be exposures to consider as you work for an Owner but also have significant exposure to third parties.

Of course the new CCDC is open to interpretation - the above are my opinions only and they could be interpreted differently by another party.

I hope this paper helps you to better quantify your exposure to third party liability losses and to reconsider if your current limits of third party liability insurance are adequate. Feel free to forward me any questions that may arise from this paper.

Most importantly in the words of Sergeant Phil Esterhaus of Hill Street Blues (1981):

“Hey, let’s be careful out there”.

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