

An Introduction to Contract Review

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Agenda/Presenters

1. What is a Contract?
2. Why is Contract Review Important?
3. Common Insurance Requirements
4. How to Perform a Contract Review
5. A Few Strategies, Tips & Tricks
6. Questions & Answers



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An Introduction to Contract Review

What is a Contract?

Definition:

- A deliberate engagement between competent parties, upon a legal consideration, to do or abstain from doing, some act.
- Contracts can be:
 - Written or oral (verbal)
 - Implied (details are assumed) or Express (specific terms)
- Oral, implied contracts are more difficult to enforce.
- Some types of contracts, such as real estate purchases, must be written and express in order to be legally binding.
- Many endorsements require **written** contracts before coverage applies.



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What is a Contract?

Some examples of legal contracts:

- Lease of buildings, vehicles, or equipment
- Purchase order / supply
- Building construction
- Service contract
- Non-disclosure Agreement (NDA)
- Sale of real estate
- Merger or divestiture agreement
- Consulting agreement



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What is a Contract?

Four Parts to a Legal Contract:

1. Offer and Acceptance by two or more parties
 - all parties must enter into contract willingly
2. Legal Purpose
 - all parties to a contract must intend to be legally bound by the contract
 - contract must be for a legal purpose
3. Consideration
 - one party promises something to the other party in exchange for something from the other party
 - May be money, goods or services
4. Legal Capacity
 - Competent Parties – legal age, appropriate mental capacity

Note - Contracts must be properly signed and dated to be binding.



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Poll Question #1

How would you rate your level of knowledge of contract review?:

- ☐ None – what is contract review??
- ☐ Beginner
- ☐ Some knowledge, but not an expert
- ☐ Expert

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Why is Contract Review Important?

Provides opportunity to negotiate for:

Mitigation of contractual risk that your company retains

Coordination between indemnification and insurance sections

Appropriate allocation of risk between contracting parties prior to loss

- Unassigned risks tend to cause conflict between contracting parties and insurance carriers at time of loss

Self-insuring when in Client's best interests to do so:

- insurance coverage may be unavailable, difficult, or costly to obtain
- contract value may outweigh risk of loss

Affects your company's bottom line

Uninsured, retained & increased losses =

- Increased loss ratios
- Higher premiums
- Increased collateral requirements
- Decreased profitability



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Why is Contract Review Important?

Affects business relationships with other contracting parties:

Government Entities

Customers

General Contractors / Subcontractors

Vendors / Suppliers

Landlords / Property Owners

Other benefits:

Avoid breach of contract, penalties & fines

Identify retained vs. transferred risks

Affects ability to manage your company's insurance program:

- Encourages communication on contract review issues:
 - Internally between Risk Management, Legal and business segments
 - Externally between:
 - company & its broker(s)
 - company & other party(ies) to contract
- Ensures a company's insurance program responds to contractual needs with respect to:
 - Any changes needed to insurance
 - Obtaining new policies
 - Securing carrier approval to insure risks

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Common Insurance Requirements

Commonly Requested Casualty Coverage:

- **General Liability** – coverage for Bodily Injury and Property Damage to 3rd parties arising out of operations, premises, personal/advertising injury, and products
- **Commercial Auto** – Bodily Injury and Property Damage to 3rd parties arising out of the use of motor vehicles
- **Workers Compensation** – coverage for medical costs and wage replacement arising out of injuries or disease to employees, plus Employers Liability – covers some instances when the employee can sue the employer.
- **Umbrella/Excess** – typically provides additional limits above underlying General Liability, Automobile Liability, and Employer's Liability

Other Commonly Requested Coverage:

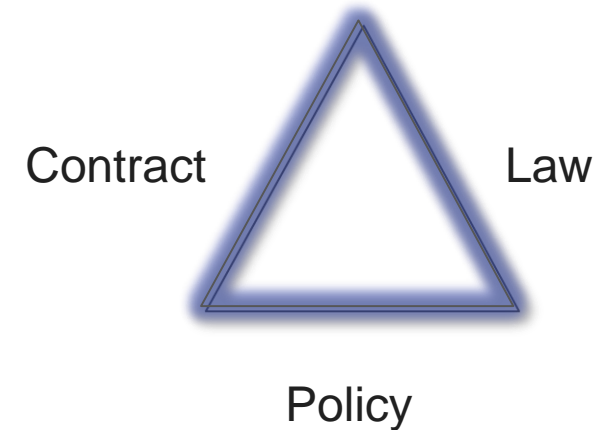
Property Cyber Liability Pollution Liability Professional Liability

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Common Insurance Requirements

Commonly Requested Items

- Additional Insured
 - 3 Factors Determine Coverage
 - 3 Levels of Coverage
 - Limited, Partial, Broad
- Primary and Non-contributory
- Waiver of Subrogation
- Notice of Cancellation, Non-renewal and Material Change
- Proof of Insurance - Certificates of Insurance
- Minimum required AM Best Rating for carriers



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Poll Question #2

How much of your time do you typically spend on contract review in a given week?

- ☐ None
- ☐ 1% to 10%
- ☐ 11% to 25%
- ☐ 26% to 50%
- ☐ More than 50%

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How to Perform a Contract Review

1. Confirm deadline

- When is the contract review needed by?

2. Identify the following:

A. Who is who?

- Which party is your company?
- Who is the other party?
- What is the relationship between both parties?

Examples:

- Landlord & Tenant
- Supplier & Vendor
- General Contractor & Sub-contractor
- Customer & Supplier



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How to Perform a Contract Review

B. What is the purpose of the contract?

- Tip - Look for the “Scope of Work”

C. What is the contract term?

- When does the contract begin and end?
- How long is the duration of the contract?

3. Briefly scan through the entire contract

- All pages attached? If not, request missing pages.
- Any missing exhibits? If so, request copies.
- Find the indemnity, limitation of liability, and insurance sections.



Why do you need to see the entire contract?

- You may be missing some insurance requirements and other important information, such as who is who, indemnification requirements, contract term, limitation of liability, definitions, scope of work, etc.

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How to Perform a Contract Review

4. Read through indemnification, limitation of liability and insurance sections carefully.

5. Search for indemnity and insurance-related wording throughout contract

➤ Common words to look for:

1. “Indemni” as in Indemnification / Indemnify / Indemnity
2. Liability
3. Insurance
4. Sole Negligence

6. Highlight any items that may be problematic, that you are unsure about, and/or that may require research.



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How to Perform a Contract Review

7. Research any items that you are not sure of.

- Black's Law Dictionary on-line version can help with legal definitions.
- General on-line searches can also help.

8. Ask if you have questions.

9. Preferred format is Word.

- Much easier to revise and allows for tracking changes.

Contract Review Tip - If contract is in pdf format, try to save as a Word document or use Adobe Pro before you begin review. This makes red-lining the insurance requirements much faster and easier.

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How to Perform a Contract Review

11. If needed request:

- endorsements
- quotes for new coverage
- certificates of insurance
- bonds

12. File contract review correspondence.



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A Few Strategies, Tips & Tricks

Contracts should be reviewed before they are signed and as soon as possible during the negotiating process.

Suggest push back on onerous insurance and indemnity/hold harmless requirements.

- Often terms can be negotiated to more favorable terms. If you don't ask, you don't get.

Compare Indemnity scope to Additional Insured scope.

Who wrote the contract?

- Beware! Whoever wrote it will have written it with terms and conditions in their own favor.

Beware of requirements for:

- Minimum / full policy limits
- Specific wording on Certificates of Insurance (COI's)
- Use of non-Acord COI forms
- Specific endorsements – especially additional insured endorsements
 - Some examples: ISO endorsement forms CG 2010 11/85, CG 2010 10/01 & CG 2037 10/01, or equivalents

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Questions?

Thank you for your time!



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