

## TEN-MINUTE TIPS

### **Commercial general liability risk transfer for your general contractor clients**

Your contractor clients who act as the general contractor on a job site face unique insurance challenges. You can support them with a professional review of their construction contracts. Consider appropriate risk transfer to ensure that the organization best positioned to prevent loss is held responsible for injuries or damages.

Because subcontractors control the work site, operations or premises, transferring the risk of financial loss to them makes sense. By implementing an effective risk transfer program, general contractors can avoid financial responsibility for injuries caused by a subcontractor's faulty work. Effective risk transfer enhances a general contractor's ability to submit competitive bids by limiting responsibility for loss.

#### **The Set Up**

The owner of a commercial business hires your general contractor client to construct a building addition. The general contractor in turn hires a subcontractor to complete parts of the project.

The subcontractor builds a wooden scaffolding 15 feet high and installs a ladder for workers to climb to the scaffolding. Because the ladder and railing are not properly secured to the scaffolding, the subcontractor's employee falls off the ladder and sustains a significant back injury. A visitor to the work site is also injured by the falling ladder, railing and employee.

While it was the subcontractor's work that led to the injuries, the general contractor has duty to maintain a safe work environment. Who has financial responsibility?

#### **The Fall Out**

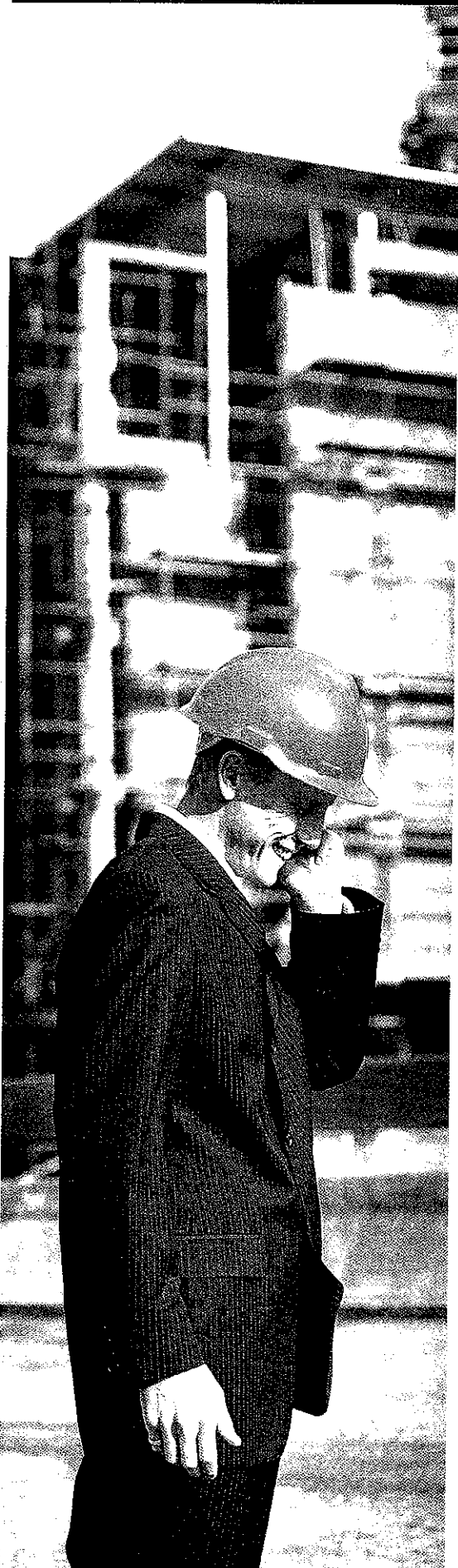
**Scenario 1:** There is no construction contract with adequate risk transfer in place between the general contractor and the subcontractor.

**Result 1:** Without adequate risk transfer, the general contractor can be held financially responsible for failing to maintain a safe work site. The subcontractor's employee (in most states) and the visitor can sue the general contractor alleging its negligence led to their injuries.

**Scenario 2:** There is a construction contract with adequate risk transfer in place between the general contractor and the subcontractor. The contract requires that the subcontractor have:

- a limited form indemnity agreement including the duty to defend and hold harmless language in favor of the general contractor
- minimum CGL coverages and limits of insurance for a specified time during and after completion of the subcontractor's work, including naming the general contractor as an additional insured on a primary basis per a specified ISO or equivalent additional insured endorsement

**Result 2:** The general contractor's risk transfer program places responsibility for defense costs and payment for the injuries with the responsible party. With a limited form indemnification agreement, each party pays a percentage of the total claim based on the percentage of their liability. This is the same standard applied under common law. In our example, if the claim settles for \$100,000 and the subcontractor is found 70 percent at fault, the subcontractor pays \$70,000 and the general contractor pays \$30,000.



## Want to know more?

Visit CincLink® and then choose Learning Center to search by class code to register or find more information on these classes:

- Contractor's Liability Workshop for Agents (AC225) – this classroom experience is taught at locations across the U.S.
- Risk Transfer Web Conference (AWC001) – get real time answers to your questions with this Web conference led by a Cincinnati associate. To hear a playback of a previously recorded Web conference, search class code AC0123.
- Contractor's Liability & Risk Transfer (AC0240) – take this online course any time from the convenience of your computer.

Visit CincLink and then choose Marketing Materials under Quick Links to download your copy of these publications:

- Agent's Guide to Risk Transfer, Adv. 488, 7/03 (not available in all states)
- Talking Points for Agents – Hypothetical Risk Transfer Claims Scenarios, MI1300, 1/09, Ed. 2
- Contractors' Risk Management Practices, Adv. 550, 02/04

### The Take Away

- Owners, developers or general contractors can be held financially responsible for injuries and damages caused by subcontractors. While a subcontractor's employee cannot usually sue his employer, in most states, he can sue the general contractor. This is called a third-party over action.
- Before your general contractor clients sign contracts or begin construction encourage them to:
  - consult with you to be sure the insurance requirements within their construction contracts are adequate and reasonable and to make sure their insurance coverages meet the requirements
  - ask for a review of the contracts by their legal counsel, with expertise and experience with construction contracts
- During the contract negotiation, general contractors should require subcontractors to:
  - include an enforceable indemnification/hold harmless agreement in their favor
  - add them as an additional insured on a primary basis for ongoing operations and for completed operations for a specified length of time using a designated ISO or equivalent form
  - carry CGL limits of at least:
    - \$1,000,000 Each Occurrence
    - \$2,000,000 General Aggregate on a per project basis
    - \$2,000,000 Products/Completed Operations Aggregate
    - \$1,000,000 Personal & Advertising Injury
- General contractors should review any Certificate of Insurance for compliance with the construction contract and ensure that updates are made before permitting any subcontractor on the job site
- General contractors should retain Certificates of Insurance for as long as they can be sued for that project
- Familiarize yourself with the statutes and regulations in states where your clients do business to help guide them on when to seek appropriate legal counsel:
  - A few states limit the liability that can be assumed under additional insured status
  - Some states allow other types of indemnification agreements:
    - Broad Form – the subcontractor can agree to assume specified liability for all negligence, even the sole negligence of the general contractor. Let's imagine that the general contractor installed the scaffold and ladder and was solely at fault for the loss. By virtue of the indemnification agreement, when suit is brought against the general contractor by the visitor and possibly the subcontractor's injured employee as well, the subcontractor could cover the general contractor's financial obligations, even though the general contractor was solely at fault.
    - Intermediate Form – the subcontractor agrees to assume all specified liability except the sole negligence of the general contractor. If it is clear the general contractor is solely at fault, the intermediate form indemnification agreement does not require the subcontractor to assume the defense and indemnification of the general contractor. However, if the general contractor is not found 100 percent at fault, the subcontractor is responsible for the entire amount of the loss.

Contact your Loss Control representative to discuss loss control services available to you and your clients. Risk transfer services include agency-sponsored seminars and individual consultation with policyholders.