



BUILDING TOGETHER



Eric Messer

Business & Risk Consultant -
Construction
emesser@starrgroup.com

What's Cheaper?

Filling the holes in your contracts now OR testing the legal waters later?

What in the world happened to simplicity of relationships and contracts between Higher Tier contractors (HTC) (i.e., a general contractor) and Lower Tier Contractors (LTC) (i.e., a subcontractor)?



It's a standard contract with just enough legalize to confuse everyone and enough loopholes to cover nothing!

Well, unfortunately, simplicity got a lot of contractors in trouble because it did not adequately address their respective responsibilities. In addition, insurance policies have changed substantially to reflect the changing legal climate in construction. The result? Complexity and confusion on an unprecedented scale providing fertile ground

that may challenge your company's financial health. It may surprise you to learn that of all the construction and/or insurance contracts we review, OVER 85 percent of them have major holes that, in the event of a loss, could cost your company dearly!



Insurance & Risk Solutions

5005 Loomis Road, Greenfield, WI 53220

P: (414) 421-3800 F: (414) 421-6145

Visit us at StarrGroup.com



THE STARR GROUP: Performance-driven analytic risk advisors that deliver insurance, benefits, cost control, and DE-RISKING strategies to ambitious leaders looking to break-free from insurance dependency and boost performance.



While there can be multiple reasons why you are facing legal risk with your contracts, we find two reasons to be quite common.

First, we find the culprit to be improper contracts. It is quite amazing how many contracts we come across that are simply a compilation of the various contracts a contractor has signed and used over the years. This is a very dangerous practice since the contracts are not clear, concise, and personalized to your specific organization.

Second, incomplete insurance policies can be a huge risk. So many policies reviewed have the wrong endorsements or provisions not properly adhered to. This complexity is quite an undertaking for both agent and attorney.

Most attorneys will yield to the insurance expert and many agents, even though they are somewhat educated on insurance, lack construction expertise. Having a construction expert as your agent has never been more important.

Third, you suffer from a combination of the two. Let me explain this one with a little story. I recently talked with a customer who was developing property (an HTC—the top of the totem pole). I requested a copy of the agreement to be used with the general contractor and all the subcontractors. I immediately noticed the attorney was using a form that greatly compromised our customer's position from a liability perspective and therefore requested it be changed. During this review, a couple of facts came to light: attorneys know a lot about law but not necessarily about construction agreements, unless it's their specialty. In addition, most attorneys agree and assume insurance agents are reading construction contracts, so there will not be gaps as to how they dovetail with insurance policies. It is darn near impossible for attorneys to have comprehensive knowledge of insurance company endorsements and how they work simply because they don't have access to them. Again, having a construction specialist as your insurance partner is vital to your protection with contracts.

If the above points are true then it goes without saying, contractors need to be working with an insurance agent that is extremely well versed in BOTH construction contracts and the necessary correlating insurance contracts. In addition to the above concerns, matters have been made more complicated lately as the insurance industry is utilizing new endorsements taking coverage away from contractors, their logic being the courts have stretched their interpretation of what was meant to be covered in the first place. Suffice it to say, these changes will muddy the waters to an even greater extent, and it is critical that you, or at a minimum your attorney and insurance agent, understand these takeaways and how they affect your company.

A word of advice: make sure your trusted advisors (i.e., attorney and insurance agent) have the necessary expertise to help you fill those holes before it is too late!