

HOW TO AVOID THE SEVEN DEADLY SINS WHEN BUYING GENERAL LIABILITY INSURANCE

And how you as a Contractor can finally get the peace of mind you work so hard for!

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This report was put together at the request of my clients. Ten years ago, this report would not have been necessary, but times have changed. Ten years ago you could bid a job complete the job and move on to the next job. Lawsuits happened just to the next guy. Insurance policies were simple and life was wonderful... General liability insurance has changed drastically in the last ten years and now there are traps... not intentional traps, but changes in the industry that you have to keep abreast of, which brings us to the **7 Deadly Sins...**



Choosing The Wrong Agent or Broker

As strange as this may seem, your biggest problem might be your current insurance agent or broker. Not that he is not trying to do a good job, but if he does not handle Construction insurance on a day to day basis, he is out of touch with a marketplace that is changing day to day. Keeping up with the Construction Industry is a full time job.

If your broker is not Independent he may not have the tools available to do a good job. Non-Independent agents must represent one company only. He may not represent the best company for your business.



Occurrence vs. Claims Made

Violating This Sin Can Wipe Out Your Entire Life's Savings.

Construction claims made policies became popular in the mid 1980's and have been around ever since. The promise of these policies were lower rates, but at what long-term damage? In some instances there is no cost savings. Claims made policies for a contractor are the worst possible policy you can buy. Let me explain: Claims made policies allow you to make a claim on your policy only during the policy year they are in force. Contractors have claims down the road not in the same year as the project is built!

If you want to leave that company and go to another company you will have to purchase additional insurance to cover your claims reported after your policy is cancelled. This type of additional coverage is called "tail" coverage.

An example:

You build a new room addition, everything goes well and you and your customer are very happy with the final outcome... four years later your customer calls you and says that the roof is leaking and water came in the house and ruined his new \$25,000 grand piano. He expects you to repair the roof, the drywall, wallpaper, carpets and, of course, replace the grand piano...

A claims-made will not allow you to file a claim four years later unless you stayed with the same company the whole time. If you intend to shop other companies after the claims made policy expires you must make a decision, since you cannot make a claim against a claims-made policy after the policy expires unless you buy extended liability coverage "the tail coverage". The tail coverage extends the period of time you can report a claim.

If you decide not to buy the "tail" you will not be able to report a claim against the claims made policy. And to make matters worse the terms and conditions for tail coverage can vary widely. The additional coverage reporting period could cost up to 200% of the expiring premium.

When your policy comes up for renewal with a claims-made policy you must decide.

- **Do I leave the company and pay the additional insurance for coverage for the extended reporting period or go without?**
- **Do I stay with the same company? Their prices on the new year may stay the same or go up sharply.**
- **Do I switch to another company who has better rates and coverages?**

This limits the marketplace for you, and makes it harder to accept a better bid from another carrier. Claims-made policies may work in other lines of insurance, but for contractors they are a disaster. Take time after reading this report to look for your policy and see if your current policy is either an occurrence form or claims-made...



Insurance Company Rating

Insurance Companies are given a grade, just think about the grades you received in high school or college. A,B,C,D,F. Insurance companies are given a financial report card by the A.M. Best Company.

An Insurance company with less than an "A" rating can be a potential problem for two reasons, 1. There is a risk of the company going out of business and 2. If you work for the state, county or city, they will usually not accept any company less than an "A" rating. Also, if you hire on as a subcontractor most general contractors will not accept any rating less than an "A". With some state government offices and general contractors not accepting your liability insurance, you will be limited to the type of jobs you can accept. If you do not know your company rating feel free to call my office at any time, we will be glad to look it up for you.



Exclusions

First off lets get one thing clear..... **All policies have exclusions.** You hear terms like **all risk, special form, comprehensive, full coverage.** Those phrases do not mean there are not exclusions. In a contractors general liability policy all the exclusions are listed on the first or second page of the policy or on the second page of the policy. **The problem is that they are usually listed by form number and edition, not by name.** In order to make sure you understand the exclusions, look at the form numbers on the front page and go find that form (by number and edition) in the policy. Then read it carefully and see if that is a problem for the kind of work that you do. If you see a

form number on the front of the policy but you cannot find that form in the policy, your policy is **NOT COMPLETE!** Someone forgot to add that form to the policy when the policy was put together. People make mistakes! **The exclusions are critical.** When you get a proposal for insurance the first thing you should look at are the exclusions. For instance, if you are a concrete contractor and you do house pads, if you have an exclusion for foundation work in your policy you have a problem. The worse thing is you will not find out about your problem until you have a claim and it is denied, by then it's too late. Here is a list of exclusions I have found in many policies, this list is *by no means "all inclusive"*. Look over this list and see what exclusion would apply to your operation.

DESIGNATED WORK

Most general liability policies automatically cover a business for just about any type of work that it engages in during the policy year. Let's say a sub's premium is based on the carpenter classification. Although, that's what he does 90% of the time, he may do a little roofing, electrical, or plumbing work. Most policies will cover him for this other work, and if he does enough of it, they'll just charge him accordingly for those classes of work at his year end audit. If an underwriter didn't want to cover his roofing or electrical work, he/she could use the designated work endorsement to exclude those classes. **This exclusion could be nasty.**

INDEPENDENT CONTRACTORS

Claims arising out of: The acts or omissions of independent contractors while working on behalf of any insured, or the negligent hiring or contracting, investigation, supervision, training, retention of any independent contractor for whom any insured is or ever was legally responsible and whose acts or omissions would be excluded. **If you use subs, this exclusion can be a killer.**

ASBESTOS

No coverage for exposures to asbestos, asbestos fiber, or any material containing asbestos or asbestos products, including without limitation, the costs of asbestos removal or damage in the course of effecting such removal (Very common exclusion).

PROFESSIONAL LIABILITY

Claims arising out of the rendering of or failure to render any professional services by you or any engineer, architect or survey, or who is either employed by you or performing work on your behalf in such capacity. Professional services

include preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings; and supervisory, inspection, architectural or engineering activities. **For example, if you make a structural change without the architect's approval, there is no coverage.** (Typical exclusion)

CONSTRUCTION MANAGEMENT ERRORS

* See Professional Liability

CONTRACTORS WARRANTY

This means that if you hire subcontractors, you must get a certificate of insurance from them. If you do not, the amount of your contract with the sub will be added to your payroll or gross receipts and you will be charged. In other words you will pay for the subs general liability. Some companies use a stricter version of this. They require the sub to have the same limits of insurance as you do.

FORMALDEHYDE

Claims arising directly or indirectly out of formaldehyde whether or not the formaldehyde is airborne as a fiber or particle, contained in a product, carried or transmitted on clothing contained in or a part of: any building, building material, insulation product or any component part of any building.

X.C.U.

Explosion, collapse, and underground property damage. Not a good exclusion for Grading, Excavation, Sewer, Plumbing, Septic, and Fencing contractors just to name a few.

CLAIMS IN PROGRESS

* See Prior Claims

KNOWN LOSSES

* See Prior Claims

ROOFING

Some roofing exclusions are plain and simple. NO ROOFING. Some are not as strict. You must read the exclusion carefully. Some roofing exclusions say there is no coverage while the roof is under construction or repair. For example: You tore off a roof, and since the weather forecast called for sunny skies, you decided there was no need to cover the roof overnight. It rained. There is no coverage. Read all exclusions carefully.

DEMOLITION

Plain and simple. No demolition!

SUBSIDENCE

Insurance does not apply to any liability arising out of landslide, mud flow, earth sinking, earth rising or earth shifting.

LEAD

Claims arising out of the actual or alleged presence or actual, alleged or threatened dispersal of lead, lead particles or products containing lead.

EARTH MOVEMENT

* See subsidence

NUCLEAR

Self explanatory

MULTI UNIT RESIDENTIAL

Any work in connection with the pre-construction, construction, post-construction, reconstruction, exterior remodeling or repairs of any multi-unit residential building.

CONDOS

No condos

TOWN HOUSES

No town houses

APARTMENTS

No apartments

EMPLOYMENT RELATED PRACTICES

Refusal to employ, wrongful termination, coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or other employment-related practices, policies, acts or omissions.

PRIOR CLAIMS

Claims that are in progress prior to the commencement of this policy.

PESTICIDE, HERBICIDE AND FUNGICIDE EXCLUSION

Not a good idea if you are a landscape contractor.

PRIOR ACTS

This is a very severe exclusion. This says that any work you did prior to the policy date is not covered. For contractors this can be a death sentence on all prior work. 90% of all contractor claims occur after the work was completed.

EXTERIOR INSULATION AND FINISH SYSTEM

Exterior insulation and finish system means the design, manufacture, construction, fabrication, preparation, installation, application, maintenance or repair, including re-modeling, service, correction, or replacement, of an exterior insulation and finish system (commonly referred to as synthetic stucco) or any part thereof, or any substantially similar system or any part, including the application or use of conditioners, primers, accessories, flashing, coatings, caulking or sealants in connection with such a system when performed by you.

Pollution

Absolutely no pollution.

FOUNDATION WORK

Claims arising out of foundation work, including but not limited to the design, specification, inspection, construction, installation, repair, replacement, improvement or reinforcement of any foundation or any part of a foundation. Foundation means the entire substructure below the first floor or frame of a building, including but not limited to any footings, footing beams, piers, grade beams, pilings, pilings or supports upon which the building rests.

If one of these exclusions, or other exclusions in your policy are a problem for you, one of three things happened.

1. **You did not tell your broker that you do this kind of work.**
2. **You did tell your broker and he was not listening.**
3. **Your broker does not have enough knowledge about construction insurance.**

In any case call your broker and explain the problem and get it solved before a claim occurs, if your broker can't help, find another broker. **By the way, I'm available at 800 320-8316.**



Acceptance

We touched upon this a little when speaking of company ratings, but there are many reasons why governments, general contractors and more and more, smart homeowners who will not accept just any certificate of insurance.

Certificates of Insurance are not being accepted for the following reasons:

- **Additional Insured Endorsement** (CG 20 10 07/04) when is an additional insured endorsement not an Additional Insured Endorsement? There are many kinds of Endorsements with different language. **The CG 2010 11/85 was the *Additional Insured Endorsement of choice*** it included the additional insured for premises/ operations and products and completed operations. This older form is unavailable. The replacement CG 20 10 07/04 only gives the gives the additional insured coverage while your operations are on going at the designated location. There is no products or completed operations coverage, essentially half the old coverage. In addition many company specific forms offering blanket additional insured coverage only give premises and operations coverage. Additional forms may be available but the additional premiums which are not included in your bids
- **Primary Endorsements** – along with the above Additional Insured Endorsement, many people are asking for primary endorsements, 99% of all insurance companies have an additional charge for these as well, many from \$250-\$1,000 each.
- **Waiver of Subrogation** – Another endorsement that has become popular. This is seen more in Workers Comp but does come up in General Liability and Commercial Auto. There is an additional charge for this endorsement if available.



This one is potentially a killer. I have seen dozens of companies go out of business on this subject alone within the past 10 years. It's usually your best friend or someone you were just trying to help out. When you hire a subcontractor to do work for you, he must carry General Liability insurance and he must have the same limits of liability as you do. For example, if you have a General Liability insurance policy with a \$1,000,000 limit the subcontractor that you hired must also have the same.

What happens if your sub does not carry general liability? The problem arises when your general liability company comes and audits your books at the end of the year. If you do not have a Certificate of Insurance for the sub your general liability company will add it to your payroll and You will end up paying the general liability for the sub contractor who did not buy it.

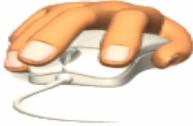
I can hear you now...**It's not fair....** fair or not, it's in the insurance contract. Let's look at the insurance company's side on this subject. If there is a problem on the job, whom is the customer going to sue? He is going to sue the subcontractor and the General Contractor. The insurance company has no recourse against the subcontractor and must defend the entire lawsuit, while the subcontractor walks away. Now, I do not expect you to have sympathy for an insurance company, but, now you know how it works. **Now you know why I call it the KILLER** that poses as a best friend. You feel sorry for them – And you pay the price.



This word may be the **biggest killer** of all in construction contracts. You have just agreed to "hold harmless and defend" others as a result of your work on the project. I have read many indemnification agreements and not a one has every said you have a maximum amount of liability; **your exposure is unlimited.** The required insurance is actually the minimum acceptable. Exclusions in an insurance policy do not relieve you of the contractual agreement to indemnify. In many cases the list of required additional insureds looks like a who's who list. Every additional insured (assuming we can get the proper endorsement) now shares your limits of coverage. **You paid for the coverage and you share your coverage with others.** There are two endorsements, which can help greatly. They are the "aggregate per project" and the "aggregate per location" endorsements. They make your aggregate limits apply at each job or location. If you have two construction yards and a separate office and all are listed and you have the aggregate limits endorsement the aggregate limit will apply at separately at each location. If you do fifty separate jobs per year and have the "aggregate per project endorsement" your aggregate limit will apply fifty times. If you are sharing limits this could save you. The worst and best thing about these endorsements is that they are often "free". Your agent only had to ask about it. Did your agent ask you? **Which takes us back to Sin #1.**

Please remember legal counsel should review all contracts.

**Thank You for taking the time to read the 7 Deadly Sins Report.
You could be just minutes away from lowering your insurance costs. Take
the first step and apply now for a cost-free, no-obligation quote within 24
hours and remember, you can't save if you don't compare.**



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