

Bringing you real solutions to real claims



TAILGATE TALK

NO CONTRACT WITH SUB BIG PROBLEM FOR GENERAL CONTRACTOR

Why is a written contract with your subs important?

- Your subcontractor's claims stay with your subcontractor!
- You save money...
- You save time from defending claims not yours to begin with...
- Your insurance remains stable...



THE PROBLEM:

Acme General Contracting was contracted to build a residential home. Acme subcontracted the roofing work to A-1 Roofing.

An employee of A-1 Roofing fell from the roof sustaining two broken legs and injuries to his back. The employee was not using any safety equipment at the time of the loss. The medical bills and lost wages paid by the workers compensation carrier were in excess of \$50,000.

The employee filed suit against Acme General Contracting. Acme was unable to tender this loss to A-1 Roofing for defense and indemnification because they did not have a written contract with them. As a result, Acme's insurance carrier had to retain defense counsel and participate in costly litigation.

Even though A-1 Roofing failed to follow proper OSHA safety procedures for its employees, Acme's insurance carrier ultimately paid the full amount of the loss totaling in excess of \$165,000 for defense and indemnification.

The course of events would have been different for Acme and its insurance carrier had there been a signed contract in place with A-1 Roofing that required they indemnify and defend Acme for any losses arising out of their work. The loss would have been tendered to A-1 Roofing's insurance carrier and they would have been obligated to assume Acme's defense and cover any ultimate indemnification settlement required. Once A-1 Roofing's insurance carrier assumed their obligations under their policy's Contractual Liability coverage, Acme would have been out of the loss and would not have incurred any defense costs. This would also have eliminated potential exposure from remaining in the litigation and a possible decision by a jury that Acme contributed to the loss for failing to provide overall safety to the workplace.

THE SOLUTION:

The above actual claim illustrates one very good reason to have a signed contract with all of your subcontractors.

It helps protect you from suits by subcontractor employees injured on the job site because required OSHA Safety Standards were not followed. However, this is only one example of the protection such a contract affords you. It could also help protect you from other loss situations that occur at jobsites from subcontractor negligence. Some of these are: Injury to a child playing on the jobsite after hours from falling in an excavation or into an opening in the home because they were not covered over during non-working hours. A prospective buyer

falls on the premises as a result of loose debris that was not cleaned up or from poorly installed carpeting.

Slips and falls are one of the most common types of jobsite losses.

However, the contract also can, and should if properly worded, help protect you from losses after the house is completed and sold. Often, subcontractor insurance carriers will not include you as an Additional Insured once the subcontractors work is completed, i.e., for Completed Operations coverage.

Perhaps the most common loss type from completed homes is water damage, whether from pipes freezing due to inadequate insulation,

waterline nail punctures during sheetrock installation, to water intrusion from roofing, siding, window & door installation or foundation work.

A signed contract with indemnification wording that includes completed work can help protect you even without Additional Insured protection for Completed Work.

We encourage you to consult with your solicitor or your insurance consultant to review your contract indemnification wording to insure it is written to protect you not only for losses during your ongoing operations at your jobsites but for losses that arise from faulty workmanship after the work is completed.

Please note that good contract wording will "help" protect you from negligent subcontractor work.

As the GC of the project, you also retain responsibility for a safe jobsite and therefore should be sure your subcontractors are familiar with required OSHA safety standards and that your site supervisors remain vigilant during daily site inspections for unsafe conditions as well as OSHA safety violations.

Now-a-days more and more bodily injury losses are exceeding insurance policy limits. It is therefore, important to ensure that your subcontractors carry General Liability limits that are at least equal to your own.