



What Insurance is Reimbursable?

If you have had the chance to review a contractor's list of insurance items included in its calculation of the General Liability charge, you may well ask yourself, "Is all of this insurance reimbursable?" The answer is "most probably not".

For the last 17 years we have seen GL, Excess liability and Auto insurance included in the GL rate calculation. Sometime later we began to see property insurance added, then Builders Risk deductibles and now Fiduciary Liability, Crime insurance, Directors and Officers Liability, Kidnap and Extortion, Employment Practices Liability, Lawyers Liability, Warranty Liability, Owned and Non Owned Aircraft Liability to name just some.

So the question at hand is "What is reimbursable?" Essentially the answer is, only that insurance that is required by contract and, per the specific terms of your contract, maybe only up to the limits required. An example of the last point, is a contract that requires \$20 million in excess liability coverage, but the contractor has \$50 million in coverage. The contractor is charging you a pro rata portion of the coverage over \$20 million even though it is not required by your project.

A contractor may elect to insure its home office contents for fire, or protect the equity of the owners of the construction company from someone in the accounting department wiring money to a Swiss bank account; however, these

insurances are not for your projects protection, not required by your contract, and therefore not reimbursable.

We typically see these extra items adding between 25% and 33% to the quoted cost so you may very possibly be able to reduce your contractor's GL reimbursement by not auditing the actual cost of GL insurance but just asking for a list and cost of the insurance charged under the heading of General Liability Insurance.

Shared Savings or Contractors Windfall

We had the opportunity to audit a \$25 million project recently where the contractor had negotiated a 50% shared savings clause. Perhaps predictably, the contractor ended up with a savings of \$1,600,000. The contractor argued that the savings was a result of hard work and good project management. Review of the records indicates that buyouts of steel and concrete were far less than was estimated. Had the contractor padded the estimate due to worry about future prices or had the contractor seen an opportunity to pad its profits? Either way the Owner could have protected against excessive shared savings bonus by capping the maximum amount to be paid or by not agreeing to one in the first place.

What Insurance Are You Getting with Subguard?

We have now audited perhaps 20 projects in the last 5 years that have had the contractor charge for Subguard. Subguard is that payment and

performance like product being sold by Zurich American Insurance Company to contractors. I do not recall one of these contracts that define what specific risk is or is not covered by these Subguard policies. I guess it comes as no surprise that we have now seen our first case where this lack of detail in the contract and understanding between the Owner and contractor has had major repercussions.

The contractor on a \$50 million project billed the Owner for Subguard at 1% of all estimated costs of work except for GC's, fee, and self performed work. Six months after contract signing one of the contractors major suppliers indicated that they could not deliver the product at the purchase order price and that delivery would be delayed by 2 months. The contractor attempted to pass on the increase in cost and schedule to the Owner. The Owner indicated that the increases were not acceptable and further indicated that the supplier default should be a Subguard claim.

The contractor, even after billing Subguard cost to the Owner, indicated that Subguard, as purchased by the contractor, did not protect against supplier defaults. As of this writing, we still do not know if the Subguard policy, as purchased, includes suppliers even though the contractor billed the Owner as if it did. Had the contract included a sample Subguard policy with the inclusions and exclusions, as purchased by the contractor, the Owner would be confident as to what insurance, if any, the contractor is billing for and paying to Zurich.

You Asked about Subsidiaries not Affiliates

We recently got a education about the word "affiliates". We had asked a contractor and the contractors insurance carrier to confirm that the contractor nor any subsidiaries of the contractor were potentially benefiting from the Contractors Controlled Insurance Program (CCIP) or the Subguard program. The contractor had steadfastly asserted that they had purchased a fixed cost plan on both. We got the requested confirmation that said neither the contractor nor a subsidiary of the contractor had entered into

any reciprocal payment arrangement with the insurance company. At the projects end, we asked to see certain records that would have possibly indicated otherwise. This is when the contractor finally came clean. When we asked about the previous letters from themselves and the insurance company to the contrary, we were advised that the company that would receive any refunds and savings from the CCIP and Subguard program was not a subsidiary but an affiliate.

Should You Ask Your Contractor to Help Prepare Your Property Loss Claim ?

Over ten years ago, after Hurricane Andrew, we advised of the potential problems with having your contractor help prepare your property loss claim for submittal to the insurance company. Now with many of our customers affected by Katrina and Rita, we repeat this concern. Of course, after a major claim event, you naturally enlist the help of a trusted contractor to assess damage and implement temporary measures to mitigate future damage. It is only natural to use this same contractor to estimate the cost to fully repair the property and assist in the verification of the loss to any insurance company. Unfortunately, we have seen that when the contractor is fully aware of the value of the insurance claim, they feel entitled to participate in the possible difference between any estimate and the actual cost of repairs. One contractor indicated that they helped create the insurance estimate and therefore should rightfully get a bonus, in the form of excess billings, because, after all, they created the Owners savings.

We feel that the best situation is when the Contractor does not have any direct knowledge of the insurance claim amount and the corresponding insurance payments and therefore does not feel entitled to over-bill.