

# ‘Know what you’re getting yourself into’: How to steer a company through the construction insurance process

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KIM SLOWEY

Anyone in the construction game knows that obtaining business insurance and being able to provide proof of that coverage to an owner, general contractor or even another subcontractor is crucial to starting work. Contracts and state laws make it impossible to function without some level of protection for employees, employers and the public at large.

The usual suspects of coverage for construction, just like any other business, are general liability, workers’ compensation and vehicle insurance. In the broadest terms, general liability coverage is intended to protect the policyholder from claims arising out of operations, be it property damage or personal and bodily injury. For example, in the crane collapse in New York City last month, the damage from the crane — including smashed vehicles and the death of a pedestrian who was crushed by the boom as it fell to the street — would typically be covered by the crane company’s general liability policy.

Vehicle insurance covers company vehicles or other vehicles used in the course of business. And workers’ compensation coverage, the requirements of which are dictated state by state, covers employees who are injured at work.

## A deeper look at insurance types

### General liability

As with most things in the construction industry, the devil is in the details, and given the breadth and variety of players, there is no one-size-fits all insurance solution, particularly when it comes to general liability.

Jake Morin, construction program executive at ProSight Specialty Insurance, said that determining appropriate coverage starts by taking a look at what a company’s end product is, such as drywall or sidewalks, and being certain that all aspects of that product and those operations are insured.

“There are several different parts to the general liability policy,” Morin told Construction Dive, “and depending on the type of contractor you are and the type of product you are putting out, those parts can become very intricate and very important.”

For example, Morin said that a drywall contractor performing work as part of new construction doesn’t have the same level of public slip and fall exposure as a sidewalk repair contractor, so that company’s focus should most likely be on the product aspect of general liability. On the other hand, not only is that sidewalk repair contractor producing a product that could cause injury to people, they also have more premise/operations exposure than the drywall contractor because of the greater pedestrian traffic and the risks associated with that, he noted.



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The bottom line is that companies want to make sure their operation and locations are covered, and the way to do that is to sit down with an insurance agent. “They’re getting paid a commission to place your business, but make them work for that commission,” Morin said. “Make sure you sit down and talk about what you’re doing, including any possible operation changes you might have.”

And operational changes are a big sticking point, according to Morin. In the example of the sidewalk repair contractor, if they move to large-scale paving operations, his risk of someone falling and getting injured increases, so they might want to raise his policy limits in that regard.

And just what should those limits be?

Bill Motherway, a former executive at Tishman Construction and now president of New York operations at risk management firm Conner Strong & Buckelew, said policy limit expectations and requirements vary greatly between regions. He said large general contractors like Tishman might carry \$200 million in liability limits, whereas \$1 million to \$2 million might be enough for a small homebuilder.

However, Motherway said that when it comes to liability insurance, some contractors neglect to consider possibly the biggest determining factor of liability — the construction contract.

“When I was a construction company risk manager, I used to tell people the last thing I want to do is buy insurance,” he said. “That’s not what we’re here for. We’re here to manage the risk of our company.” Motherway said the first step in managing that risk is to review the contract and know exactly what a company is accepting liability for, be it time delays or liquidated damages.

“I tell people that I’d love to sell you insurance, but I’d rather solve your risk management problems, and it starts with looking at your contract and making sure that you know what you’re getting yourself into,” he said.

## Vehicle insurance

Another coverage that can prevent losses down the road, Motherway noted, is adequate commercial vehicle insurance, but the underlying policies around vehicle use can be just as important as the coverage itself.

“We recommend that if you’re going to (have employee-driven company vehicles), you check the licenses of the employees every year to make sure that they’re clean,” Motherway said. By “clean,” he said he means no serious infractions like DUIs and that the drivers haven’t had their licenses suspended.

He also suggested sitting down with employees who take vehicles home and stressing that the vehicle is for their use only in the fulfillment of work duties, not a vehicle to be used for personal reasons or by other family members.

## Workers’ compensation

The last of the must-have insurance is workers’ compensation, which covers injuries to employees in the performance of their work and often goes hand-in-hand with employer’s liability coverage. While many states offer an exemption process for certain executives or one-person shops, experts agree that buying workers’ comp coverage is the smart thing to do.

Chris Ross, senior vice president and risk management consultant at Assurance in Illinois, said, “If you have a one-person operation and he doesn’t have to buy comp, and you let him work, what happens if one day he brings somebody out there to help, and then that person gets hurt? What can happen is that claim can then get filed on the comp policy of whoever hired the contractor.”

Motherway said he advises clients to get coverage and to require coverage of anyone they work with who could pose a workers’ comp risk. “I always tell my clients you need to require it because if you allow somebody to opt out, there’s a chance that, if they get hurt, they can go after you. It may be a small chance, but we always recommend it.”

## Optional coverage possibilities

As far as optional coverage that doesn’t typically come included with a general liability policy, Motherway said contractors should consider an equipment floater to the policy, which covers stolen, broken or lost tools. For some of his larger clients, he also recommends professional liability insurance for any type of supervisory errors.

Motherway added that for general contractors with many projects, he would also recommend a corporate builders risk program so that every job has the proper coverage in case of a fire or other such event. He said that in today's environment, an employment practices policy also might be a good idea to protect against claims of inappropriate jobsite behavior or sexual harassment.

## The other side of the coin

Concern over obtaining the right coverage is usually driven by general contractor or owner insurance requirements laid out in the contract. But what if someone is the owner or general contractor who has to sift through all of those certificates of insurance — the standard of proof in the industry? How do they make sure what the contractor is giving them will be adequate in case of a claim?

Ross said that simply collecting a certificate is not enough anymore. "I would tell you that those days are gone, and the folks that are still doing that are putting themselves at risk," he said.

He added that not only is it necessary to collect a certificate from each contractor — which, he said, is really just a representation of insurance on the date it was printed — it is important to ensure that the correct entities are named as additional insured and that the coverage, in some cases, includes a waiver of subrogation.

"So without making sure that all the right wording is on the certificate indemnifying the correct people, general contractors and subs might find themselves in breach of the contract they signed, and finding out you're in breach of the contract after a loss is never a good thing," he said.

Ross said this is only one component of the risk transfer process, which involves making sure to not only meet the requirements of the contract, but also to push that risk down to subs and second-tier subs. For general contractors, for example, Ross said this means making sure that subcontractors also meet the insurance and indemnification requirements of the prime contract.

To make sure that risks are minimized, Ross said Assurance has taken over the certificate of insurance screening process for their clients. "Oftentimes, we find that general contractors believe that they do a good job of this, but the reality is laws continue to change, states vary. And, unless you have a true insurance professional on staff that's 100% up to speed with all the changing laws, they're not protecting themselves in the manner they should be," he said.