

# Insurance and Indemnity Requirements for Contracts

Contract Administration Subcommittee

Municipal Research and Services Center

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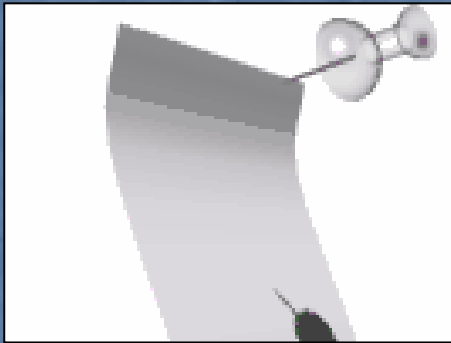
WCIA

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# ...or Passing the Buck Through Contracts



# What We'll Cover



- What is risk
- Why transfer risk contractually
- Insurance
- Indemnification

# What is WCIA?

- Formed in 1981
- Interlocal Agency
- 115 Members



# What is Risk?



Rudy Smith / The World Herald

Risk is the possibility  
of loss

# Evaluate the Risk



- Loss to your property
- Loss of Income/Extra Expense
- Bodily injury or property damage to others
- Loss to employees

# Methods of Handling Risk

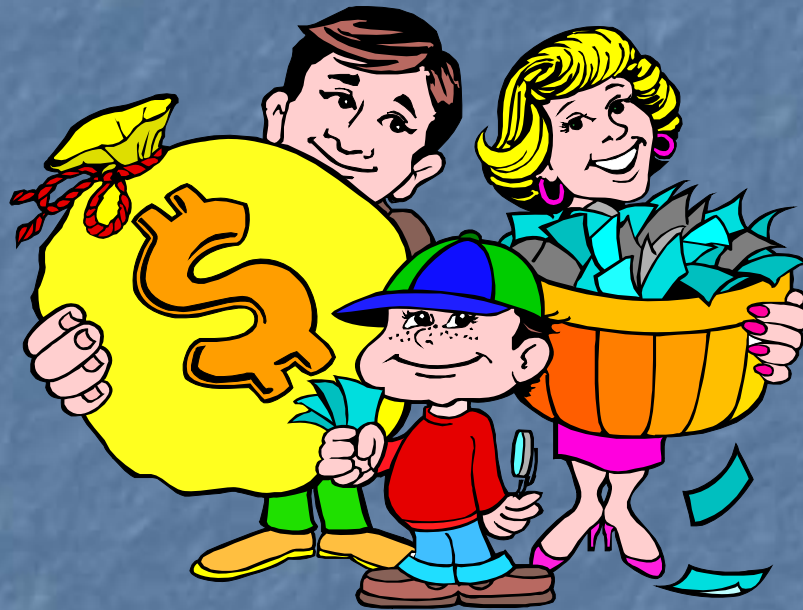


- Avoid
- Reduce
- Retain
- Transfer

# Why Transfer Risks Contractually?

“We are a municipality and to do our job we create as much red tape as possible.”

# Why Transfer Risks Contractually?



To save your entity money.

# Project Owner May be Liable Even When Using a Contractor

- Work inherently dangerous
- Hiring of an incompetent contractor
- Negligence in overall supervision by owner
- Working together negligence
- Injured contractor's employee sues owner

# Key Factors Affecting Contractual Risk Transfer



- Control of the risk
- Knowledge of risk
- Legal limitations
- Custom and practice
- Bargaining position

“The big dog usually wins”

*unknown*

# Contractual Risk Transfer Methods



Tony Gutierrez / AP

- Insurance
- Indemnification
- A belt and suspenders approach

# Insurance Requirements



Requirements should include:

- Types and scope of insurance
- Insurance limits
- Certificate of insurance
- Additional insured status

Requirements need flexibility

# Types of Insurance



- Commercial General Liability
- Automobile Liability
- Professional Liability
- Workers' Compensation

# Insurance Limits - How Much to Require?



- \$1,000,000 per occurrence & \$2,000,000 in the aggregate (minimum)
- Varies by exposure to risk
- Agg. limits may be exhausted
- Project cost may not correlate with the risk



# Outdated Insurance Terminology

- Comprehensive general liability
- Public liability insurance
- Combined single limit for CGL
- Broad form property damage endorsement
- Cross-liability endorsement

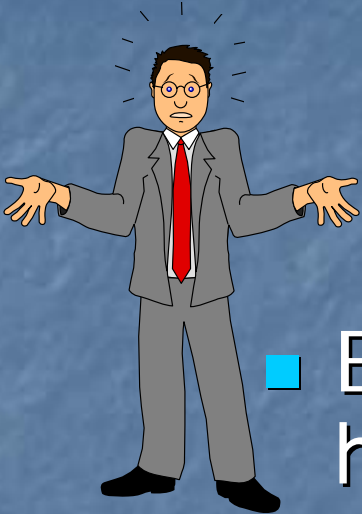
# Builders Risk Insurance



## ■ New projects

- Property insurance for facilities in the “course of construction”
- Covers contractor and owner
- Either owner or contractor may buy

# Professional Service Agreements (Consultants)



- E &O Insurance costs too much, do I have to have it?
- Limitation of liability clauses
- Consultant now reads the indemnity provision

# E&O or no E&O?

- Evaluate the risk
  - Generally greater for licensed professions
  - Will reliance on their mistakes cost you?
- Bargaining position
  - Other consultants available
- Financial strength
- Qualifications of consultant

"You don't get what you deserve, you get what you negotiate"  
*Dr. Karras*

# Limitation of Liability Clauses

- Why? Disparity between cost of service and potential liability
- Types:
  - Limited to  $>$  of fee charged or \$ amount
  - Limited to amount of insurance
  - Exclude consequential damages and lost profits

# Factors in Enforceability of Limitation of Liability Clauses

- Bargaining positions and sophistication of parties
- Limitation must be clearly defined
- Description of risks covered
- Public policy



# The Indemnification Clause



Jim Rider / South Bend Tribune

- Defend
- Indemnify
- Hold harmless

# Indemnification for?

## claims...arising out of...



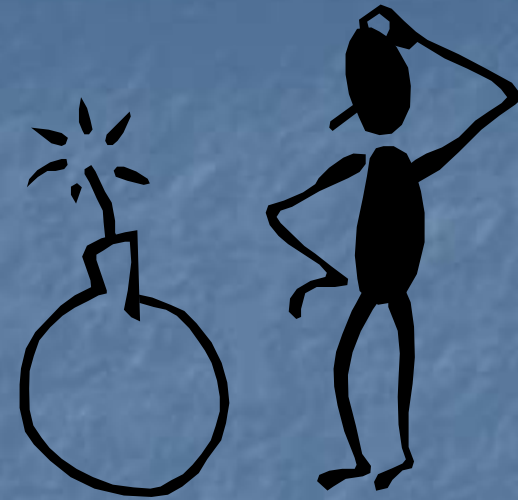
# RCW 4.24.115 Validity of Indemnification for Construction...

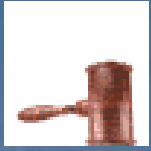


- Sole negligence of indemnitee (City) cannot be transferred to indemnitor (Contractor)
- Indemnitor only responsible for their own negligence

# Waiver of Title 51

- Waiver of immunity
- Mutually negotiated
- Contractors employees hurt on your premises





# Indemnification Clause Key Points

- Examples in WCIA manual
- Attorney should review
- Worthless if contractor financially unsound

# Questions?