



## ***CONTRACTUAL RISK TRANSFER***

### **REVIEWING CONTRACTS: A "HOW-TO" FOR CONTRACTORS**

Presented by

**Luke A. Halley**  
**Insurance Services Manager of Risk Management**  
**Halliburton Co.**

**CRT**

Although the content changes yearly, this seminar is consistently one of our most popular sessions. The day begins with an in-depth look at additional insured issues, including case law on the scope of coverage provided under the standard endorsements and "other insurance" conflicts that can negate the intent of the risk transfer if not handled appropriately. Recent developments in third-party-over action litigation will be reviewed, including how the CGL policy responds to such claims. The afternoon will be devoted to learning how to analyze contracts for risk exposures and negotiate changes that will keep the risks assumed in line with the contractor's insurance coverage. Starting with a basic "how to" discussion, learn how to help your clients assess their contractual risks and evaluate the adequacy of their insurance program in protecting the contractor against these risks.

***Monday, November 13, 9:00 a.m.–5:00 p.m.***

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the elements of a solid future

**Luke A. Halley**  
**Insurance Services Manager of Risk Management**  
**Halliburton Co.**

Mr. Halley is one of the presenters for Monday's all-day seminar, "Contractual Risk Transfer." He handles the Insurance Services activities for the Halliburton Company, located in Houston. This involves management as well as reviewing proposals, draft contracts, etc., and negotiations of the Liability, Indemnity, and Insurance sections of those documents. He holds a master's degree in Industrial Safety Management and an undergraduate degree in Insurance. He has been involved in the engineering and construction risk management professions for the past 27 years.

## ***Notes***

This file is set up for duplexed printing. Therefore, there are pages that are intentionally left blank. If you print this file, we suggest that you set your printer to duplex.

# ***REVIEWING CONTRACTS: A "HOW-TO" FOR CONTRACTORS***

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*Luke A. Halley  
Halliburton Co.*

Analyzing contract risks (and scope of coverage) on a potential new construction project.

- I. Location of Project (Domestic vs. International)**
- II. Insurers To Be used (Admitted vs. Nonadmitted)**
- III. Contractual Insurance Requirements**
- IV. Indemnification Obligations (Contractual Liability–Within Scope of CGL?)**
- V. New Facility or Renovation (Risks of Property Damage to Existing Property)**
- VI. Expected Duration of Project**
- VII. Professional Reputation of Participants (Bonding Considerations)**
- VIII. Owner Controlled vs. Contractor Controlled Insurance Program**
- IX. Surrounding Exposure for Testing**
- X. Site Security**
- XI. Limits of Liability Insurance**

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# *Notes*

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## **RISK MANAGEMENT ANALYSIS OF ITB**

- LOCATION COUNTRY / STATE
- LUMP SUM VS. COST PLUS
- REVAMP VS GRASSROOTS
- EXISTING PROPERTY
- ADJOINING PROPERTY TYPE / VALUE
- ENVIRONMENTAL EXPOSURES
- OCIP

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## **LIABILITY OF CONTRACTOR FOR PHYSICAL LOSS/DAMAGE**

- WITH RESPECT TO EACH PART OF PROJECT, CONTRACTOR SHALL, UNTIL INITIAL ACCEPTANCE, BE LIABLE FOR ALL LOSS OF AND/OR DAMAGE TO:
  - THAT PART OF THE PROJECT OR ANY PART THEREOF
  - MATERIALS TO BE INCORPORATED IN THE PROJECT AT THE WORK SITE OR IN THE COURSE OF BEING TRANSPORTED TO THE WORK SITE, OR ELSEWHERE.
- EXCEPTIONS:
  - ALL CAR POLICY EXCLUSIONS
  - SPECIFIC CAR POLICY EXCLUSIONS, I.E. NUCLEAR RISK, WAR, CIVIL WAR, ETC.

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## **CONTRACTOR SHALL, UNTIL THE DEPARTURE DATE, BE LIABLE FOR:**

- ALL LOSS OF AN/OR DAMAGE TO ANY PART OF THE PROJECT CAUSED AFTER THE RELEVANT INITIAL ACCEPTANCE
- ALL LOSS OF AND/OR DAMAGE TO OWNER'S OTHER PROPERTIES WHETHER EXISTING OR UNDER CONSTRUCTION
- ALL LOSS OF AND/OR DAMAGE TO PROPERTIES OF THIRD PARTIES INCLUDING POLLUTION AND THE PROPERTIES OF EMPLOYEES OF OWNER
- ALL INJURIES (INCLUDING DEATH) TO ANY AND ALL PERSONS

THE LOSS, DAMAGE AND INJURIES (INCLUDING DEATH) MENTIONED ABOVE SHALL INCLUDE ANY CONSEQUENTIAL LOSS

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**CONTRACTOR SHALL BE LIABLE FOR ALL INJURIES (INCLUDING DEATH):**

- TO ITS OWN EMPLOYEES
- SUBCONTRACTOR'S EMPLOYEES
- AGENTS, WORKMEN AND/OR REPRESENTATIVES AND,
- FOR DAMAGE TO CONTRACTORS' AND/OR SUBCONTRACTOR'S PROPERTIES

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**INDEMNIFICATION**

- OWNER HELD HARMLESS AND INDEMNIFIED AGAINST ANY THIRD PARTY:
  - CLAIMS, DEMANDS OR PROCEEDINGS, INCLUDING DEFENSE COSTS
- MAY INCLUDE PROCEEDINGS DUE TO:
  - ANY ACTIVITY OF OWNER
  - SOLE NEGLIGENCE OF OWNER
  - CONCURRENT NEGLIGENCE OF OWNER
  - NEGLIGENCE OF CONTRACTOR AND SUBCONTRACTORS
  - NEGLIGENCE OF CONTRACTOR ONLY
- COULD INCLUDE PARENT, SUBSIDIARY OR ASSOCIATED COMPANY OF OWNER
- LIABILITY OF CONTRACTOR SHALL BE JOINT AND SEVERAL

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## INSURANCE

- CONTRACTOR SHALL PROCURE, AND MAINTAIN AT ITS OWN COST, THE FOLLOWING INSURANCES FOR THE DURATION OF THIS CONTRACT:
  - INSURANCE AS REQUIRED BY LAW IN CONNECTION WITH CONTRACTORS PERSONNEL AND/OR THEIR DEPENDENTS
  - PROFESSIONAL INDEMNITY INSURANCE COVERING CONTRACTOR'S LIABILITY FOR ALL COSTS, LOSSES AND DAMAGES SUSTAINED BY OWNER IN PERFORMANCE OF THE WORK
  - ALL RISKS PHYSICAL DAMAGE INSURANCE COVERING LOSS OF OR DAMAGE TO CONSTRUCTION EQUIPMENT
  - COMPREHENSIVE GENERAL LIABILITY INSURANCE IN CONNECTION WITH THE WORK
  - ALL RISK TRANSIT INSURANCE COVERING ALL MATERIALS, FROM POINT OF SUPPLY UNTIL ARRIVAL AT WORK SITE

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## CONTRACTOR SHALL:

- NAME OWNER AS ADDITIONAL INSURED
- INCLUDE A CROSS LIABILITY PROVISION ON POLICY
- INCLUDE WAIVER OF ALL EXPRESSED OR IMPLIED RIGHTS OF SUBROGATION AGAINST OWNER
- BE RESPONSIBLE FOR SUBCONTRACTORS TO TAKE OUT AND MAINTAIN, AT ITS COST, SIMILAR INSURANCE
- BE RESPONSIBLE FOR ANY DEFICIENCIES
- CONTRACTUAL LIABILITY

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## CONTRACTOR SHALL (cont'd)

- FURNISH TO OWNER, NO LATER THAN 90 DAYS AFTER EFFECTIVE DATE, COVER NOTES / INSURANCE POLICIES
- PROVIDE POLICIES OF INSURANCE TO OWNER WITH NOT LESS THAN 30 DAYS NOTICE OF CANCELLATION

SHOULD CONTRACTOR NEGLECT OR REFUSE TO PROVIDE REQUIRED INSURANCE, OWNER SHALL HAVE RIGHT TO PROCURE SUCH INSURANCE

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## OWNER SHALL PROVIDE AND MAINTAIN, AT ITS EXPENSE, THE FOLLOWING INSURANCE COVERING:

- CONSTRUCTION ALL RISKS INSURANCE FOR REPLACEMENT VALUE OF PROJECT
  - SUBJECT TO STANDARD EXCLUSIONS AND DEDUCTIBLE
- DAMAGE TO OWNER'S OTHER PROPERTIES DUE TO NEGLIGENCE OR LACK OF DUE DILIGENCE OF CONTRACTOR AND/OR SUBCONTRACTOR AND/OR THEIR EMPLOYEES
- THIRD PARTY LIABILITY COVERING ALL OPERATIONS HEREUNDER FOR LOSS OF OR DAMAGE TO PROPERTIES OF THIRD PARTIES
  - INSURANCE SHALL APPLY IN EXCESS OF THE INSURANCE CARRIED BY CONTRACTOR

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## INSURANCE SHALL:

- BE VALID DURING PERIOD OF CONSTRUCTION AND (3) MONTHS TESTING
- BE VALID UNTIL THE DEPARTURE DATE AND DURING PERFORMANCE OF GUARANTEE WORK
- INCLUDE LOSS OF OR DAMAGE TO THE PROJECT IF SUCH LOSS OF AND/OR DAMAGE:
  - OCCURS DURING GUARANTEE PERIOD FROM A CAUSE ARISING BEFORE INITIAL ACCEPTANCE
  - IS CAUSED BY CONTRACTOR IN THE COURSE OF FULFILLING ITS OBLIGATIONS WITHIN A PERIOD OF 12 MONTHS FROM DATE OF EXPIRY OF INITIAL OPERATIONS

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OWNER SHALL CAUSE INSURERS TO WAIVE RIGHTS OF SUBROGATION AGAINST CONTRACTOR AND ITS SUBCONTRACTORS

IF CONTRACTOR FEELS INSURANCE IS INADEQUATE, CONTRACTOR SHALL, AT ITS EXPENSE, OBTAIN INSURANCE FOR THE INADEQUACIES AND CAUSE OWNER AND OTHERS TO BE COINSURED AND HAVE INSURERS WAIVE ALL RIGHTS OF SUBROGATION

ALL DEDUCTIBLES, EXCEPTIONS AND EXCLUSIONS APPLICABLE TO THE INSURANCE SHALL BE FOR THE ACCOUNT OF AND BE PAID BY CONTRACTOR

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NOTICE OF ANY OCCURRENCE WHICH MAY GIVE RISE TO ANY CLAIM FOR LOSS, SHALL BE GIVEN BY CONTRACTOR TO OWNER GIVING FULL DETAIL WITHOUT DELAY

CONTRACTOR SHALL OBTAIN THE INSURANCE FROM REPUTABLE, FINANCIALLY SECURE COMPANIES ACCEPTABLE BY OWNER

CONTRACTOR'S LIABILITY WILL NOT BE RESTRICTED, LIMITED OR ALTERED BY ANY STIPULATION WITH REGARD TO INSURANCE OR BY ANY APPROVAL OF INSURANCE POLICIES FOR WHICH CONTRACTOR IS LIABLE

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## OWNERSHIP AND TITLE

OWNERSHIP OF ANY PART OF THE WORK PERFORMED, AND THE PROJECT, WHETHER COMPLETED OR NOT, SHALL VEST IN OWNER

CONTRACTOR WARRANTS GOOD TITLE TO ALL MATERIALS

TITLE TO ALL ITEMS OF MATERIALS SHALL PASS FROM CONTRACTOR TO OWNER SAME TIME SUCH TITLE AND PROPERTY PASS FROM SUBCONTRACTOR TO CONTRACTOR

TRANSFER OF TITLE SHALL IN NO WAY AFFECT OWNER'S RIGHTS OR CONTRACTORS' OBLIGATIONS

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## **OWNERSHIP AND TITLE (cont'd)**

NOTHING SHALL RELIEVE CONTRATOR FROM ITS OBLIGATIONS

CONTRACTOR SHALL HAVE FULL RESPONSIBILITY AND AUTHORITY OVER THE CARE, CUSTODY AND CONTROL OF THE WORK, THE PROJECT AND MATERIALS

CONTRACTOR SHALL INCLUDE APPROPRIATE PROVISIONS TO SECURE OWNER'S RIGHTS IN THE SUBCONTRACTS

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## **IN SUMMARY:**

### **LIABILITY INSURANCE CONSIDERATIONS FOR CONSTRUCTION PROJECTS**

- DOMESTIC VERSUS FOREIGN
- ADMITTED VERSUS NON-ADMITTED
- CONTRACTUAL REQUIREMENTS
- INDEMNIFICATION CLAUSES
- GRASSROOTS VERSUS EXISTING FACILITY

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## IN SUMMARY: (cont'd)

### LIABILITY INSURANCE CONSIDERATIONS FOR CONSTRUCTION PROJECTS

- DURATION OF CONSTRUCTION / MAINTENANCE
- PROFESSIONAL REPUTATION OF PARTICIPATNS
- OWNER CONTROLLED VERSUS CONTRACTOR CONTROLLED
- SURROUNDING EXPOSURE FOR TESTING
- SITE SECURITY
- LIMITS OF LIABILITY

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## QUESTIONS ????

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