

EUCA

Serving Union Contractors

MAGAZINE

EUCA is the largest and most influential union contractor association in the Western United States

AUGUST 2007

ISSUE 8/VOLUME 213

www.euca.com

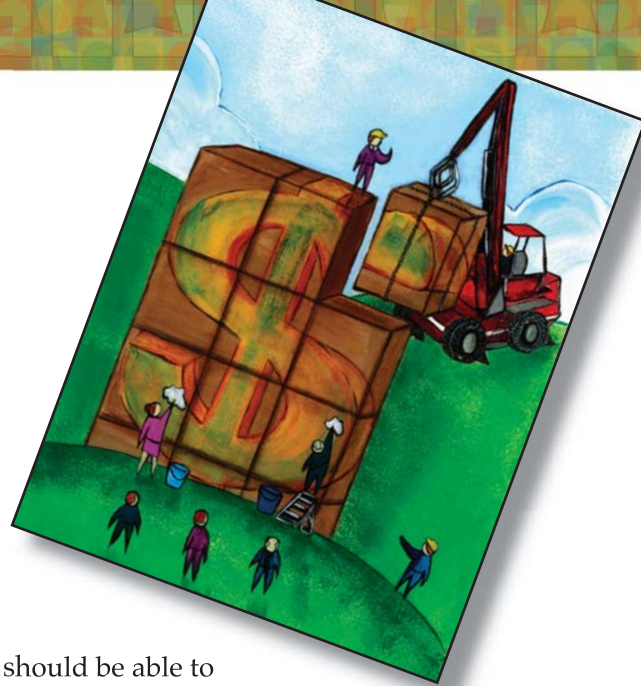


Bob Burns

Insurance

— good information for your business

“The High Price of Low Cost” Things to Consider When Purchasing Insurance and Selecting a Broker



For many Contractors, purchasing insurance is based upon obtaining competitive quotes from multiple insurance companies. The Contractor assigns markets to various brokers willing to play the quoting game and often times selects the broker based on which one was able to obtain the cheapest price. When selecting a broker however, the Contractor should keep in mind that the cost of insurance is just one part of the cost associated with the risk of being in business. In addition to the premiums paid for insurance, the Contractor also needs to identify and fund for risks not covered by insurance. These costs include self-insured exposures, contractual risks that may or may not be identifiable or readily apparent to the Contractor in the contract documents, and overhead/administrative costs. It is in these non-insurance areas of risk management where broker selection can be crucial in controlling your total cost of risk.

Purchasing Insurance

The insurance purchase is the easiest part of the cost of risk equation. Almost any insurance broker can obtain a competitive quote if provided access to an insurance market that actively writes the Contractor's type of business. The problem with some of these "allegedly" competitive quotes may be a lack of adequate coverage. Many carriers, for example, offer substandard additional insured endorsements, provide them for additional fees, or won't provide contractually required waivers of subrogation. Another problem may be the financial stability of the insurance carrier. Do all of the carriers tendering quotes have the financial ratings to satisfy all of your contractual requirements?

Self-Insured Exposures

Along with the actual premium costs, Contractors need to include those exposures that are self-insured as part of the cost of the project or overhead. These exposures can be as simple as insurance policy deductibles, excess limits of insurance or additional lines of insurance such as professional liability, pollution or mold insurance coverage that are usually not part of the Contractors insurance program.

The broker should be able to provide the Contractor with a deductible loss pick based on the Contractors loss history to arrive at the proper cost allocation for this self-insured deductible exposure. In addition, the broker should be able to advise what the costs of any self-insured exposures are from an insurance cost standpoint.

Contractual Risks

Since virtually every project requires that the Contractor sign some form of indemnity clause, it is in this area that the broker must play a key role in helping the Contractor identify risk.

An example would be a Contractor bidding on a Design/Build project. He carries no professional liability insurance even though he has an exposure to design liability as part of his every day operations. He decides not to carry professional liability insurance because he always subcontracts the design exposure to an architect or engineering firm and requires those entities to provide professional liability insurance to protect this exposure. The Contractor signs a standard indemnity clause with the project Owner, making him responsible for any and all claims with no limitation of liability or limitation to claims arising out of or due to the Contractors negligence. The Contractor understands that he has some contingent risk arising from his subcontractors design, but is comfortable that the subcontractor has professional liability insurance that will protect him in the event of loss.

The first problem or unidentified risk arises when the Contractor does not limit his liability to claims due to his negligence, and then does not cap his design liability to the design fee, or as an alternative, cap the

The Contractor should become a part of the Contractor team reviewing project insurance clauses to make sure the Contractor is providing the coverage required by the contract. The Contractor should also review the Contractor if certain provisions are problematic or uninsurable.

liability to the contractually agreed amount of professional liability insurance.

A second problem arises when the Contractor sends the indemnity agreement to the design subcontractor, and the design subcontractor objects — advising the Contractor that he will only agree to indemnify for claims arising out of or due to his negligence. The Contractor then decides to re-bid this design subcontract, but finds out that they too will insist on the same type of limitation of liability and indemnity terms.

The contractor has now incurred costs that were not included in the original bid, and he also is now carrying an unfunded exposure since he does not have professional liability insurance to cover the design risk. The Contractor should have the broker become a part of the Contractor's team reviewing project indemnity and insurance clauses to make sure the Contractor is providing the insurance required by the contract, or advising the Contractor if certain indemnity provisions are problematic or uninsurable.

Overhead/Administrative Costs

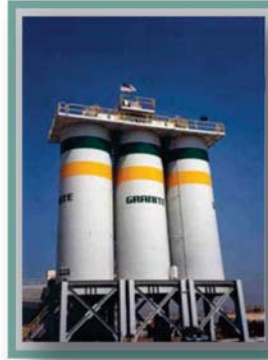
Some of the overhead/administrative costs that are part of the cost of the insurance program may include premium finance charges, or administrative costs for claims, legal and loss control. Some of these costs may be part of the broker service fee, or provided by the Contractor's own in-house resources. Either way, they should be charged separately as either a cost of the work, or included in the project overhead.

In conclusion, it is important to remember that a focus on insurance and the cheapest premiums, does not always produce the lowest cost of risk. There is often a costly price to pay for the unidentified and ultimately unfunded risks. Rather than obtaining quotes from multiple brokers that are only providing the premium part of the risk equation, the contractor should instead go through a broker selection process. Consider several brokers based on their products, services, client references and experience with firms similar to yours. Brokers that don't

have the broker
contractor's
indemnity and
make sure the
the insurance
t, or advising
an indemnity
atic or

GRANITE CONSTRUCTION MATERIALS

- Hot Mix Asphalt
- Construction Aggregates
- Decorative Rock & Path Fines
- Landscape Boulders
- Recycled Products
- Road Base



Pleasanton Asphalt Plant
1544 Stanley Boulevard
Pleasanton, CA 94566
Phone: 925-462-1033



Santa Clara Asphalt Plant
3800 Bassett Street
Santa Clara, CA 95054
Phone: 408-988-4551



San Jose Asphalt Plant
2829 Monterey Road
San Jose CA 95111
Phone: 408-226-3751

Concord Asphalt Plant
2000 Via De Marcados
Concord, CA 94520
Phone: 925-685-8609

Felton Quarry & Asphalt Plant
1800 Felton Quarry Road
Felton, CA 95018
Phone: 831-335-3445

Freeman Quarry
3201 Old Monterey Road
Gilroy, CA 95020
Phone: 408-847-5000



For for more information please call:
Greg Shannon – Material Sales
Mobile: 408 - 210 - 9862

California Contractor's License #89

www.graniteconstruction.com

An Equal Opportunity Employer

offer all of the required services and industry expertise should be eliminated during the broker interview process. Choose the broker that best fits your criteria and needs, and appoint them as your broker of record. Then let them design, market and negotiate your insurance program for you. ♦

Contributed by Tony J. Page and Brian McDonnell of ABD Insurance and Financial Services. ABD's Construction and Real Estate Practice serves a large and diverse group of clients from 20 locations across the western United States. SVP, Brian McDonnell, is Managing Director of the firm's Redwood City Construction and Real Estate Group, and SVP, Tony Page, leads ABD's San Diego Construction Services Team. For more information, visit ABD on the web at www.cybersure.com.

Insurance

— good information for your business



Adding A General Contractor To Your Liability Insurance Policy: What You Need To Know About Additional Insured Endorsements

When drafting subcontracts, general contractors routinely include both an indemnity provision and an insurance provision, enabling the general contractor to shift its risk of loss to the subcontractor. Insurance provisions in

subcontracts typically contain at least three basic requirements:

- 1) that the subcontractor maintain liability insurance with specified limits;
- 2) that the subcontractor provide a certificate of insurance; and
- 3) that the subcontractor add the general contractor as an insured under the subcontractor's policy, in other words, make the general contractor an "additional insured" under the policy.

Some subcontracts also require that the subcontractor provide an additional insured endorsement form in lieu of, or in addition to, the certificate of insurance. Subcontracts frequently require that subcontractor submit the certificate of insurance and/or additional insured endorsement to the general contractor before the subcontractor begins its work.

Requiring both indemnity and additional insured status doubles the general contractor's safety net against claims for injury or damage arising out of the project. The general contractor, as an additional insured, is entitled to an immediate defense of covered claims, as opposed to recovering defense costs at a later date as the subcontractor's indemnity. Adding the general contractor to its policy also benefits the

Understanding Car Rental Insurance

When you step up to the rental car counter and have to decide on what insurance options to purchase or decline, what should you do? Are you going to pay for the rental car with a personal or business credit card? Are you going to rent a truck or private passenger car? Who is going to be listed on the rental contract as an authorized driver? Is the use of the vehicle for business, pleasure, or both?

Unfortunately, there is no easy answer to these questions. Rental company contracts, business and personal automobile insurance coverage, and the limited coverage provided by credit card companies all vary.

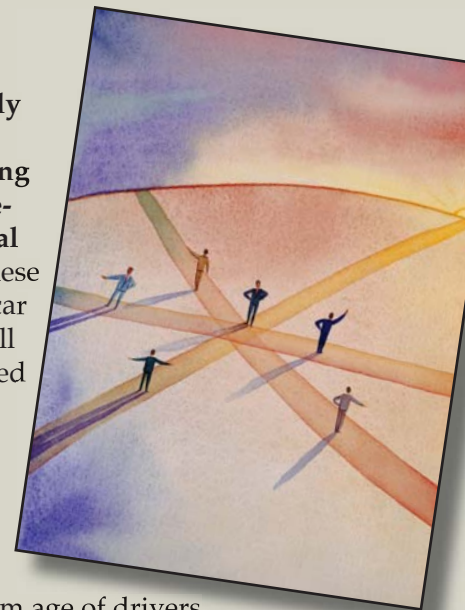
The exposures are substantial when renting a car or truck. They include:

- Damage to the vehicle regardless of fault. This usually means you are responsible for "the cost of repair up to the value of the vehicle, plus loss of use, towing, storage, impound fees and an administrative charge."
- Your personal or business liability related to the use of the vehicle (you hurt someone or damage someone else's property).

- Voiding the rental company contract by breaching its terms or conditions. Typical breaches include: driving out of state; violation of driving laws such as excessive speed, DUI, or reckless driving; towing; driving off road; allowing parking attendant to use vehicle, or most commonly allowing an unauthorized person to drive the vehicle.

Recommended Action

If your business frequently rents vehicles, then you should consider negotiating a corporate override agreement with a national rental car company. Typically, these contracts make the rental car company responsible for all damage except when caused by a DUI or reckless driving by the driver. You can also negotiate automatic coverage for spouses of the driver and business associates. Sometimes you can lower the minimum age of drivers from 25 years old to 21 year old.



subcontractor by reducing or eliminating the amount it could be personally obligated to pay as an indemnitor. While the subcontractor's policy may likely cover all or part of the subcontractor's contractual indemnity obligation to the insured, the general contractor is not going to need any indemnity from the subcontractor if the insurance policy covers the entire loss. Also, as an additional insured, the subcontractor has all the rights and benefits of an insured, and deals directly with the insurer.

Therefore, as a subcontractor, it is important to understand the insurance requirements in your subcontract, and become familiar with certificates of insurance and additional insured endorsements, not only to comply with the immediate requirements of the subcontract, but also to protect yourself if a claim is made against the general contractor five years down the road, and the general contractor seeks coverage as an additional insured under your policy. That is not the time to discover that the insurance company does not recognize the general contractor as an insured!

Certificates Of Insurance Are Merely Evidence Of Your Insurance Policy

A certificate of insurance is a piece of paper

Most businesses are not big enough to have an override contract with a rental company. We suggest developing Car Rental Guidelines for your business.

Sample Car Rental Guidelines

1. Always use the corporate credit card when renting a vehicle or truck on company business. If you do not have a corporate card, use your own card but be aware your card limit may be impaired by the rental company if you are involved in an accident.
2. Sign the rental car contract "your name on behalf of XYZ Construction Company." This helps trigger your corporate auto insurance coverage.
3. Accept the Loss Damage Waiver (LDW) or Collision Damage Waiver (CDW). This means that for \$8 to \$20 a day the rental company is responsible for physical damage, loss of use and other charges if the rental vehicle is damaged. It can also reduce the hassle for the driver associated with trying to file a claim at the rental return counter.

Continued on next page

that is issued to another person or entity, called the certificate holder, as evidence that you have a specific insurance policy or policies. The certificate typically reflects the identity of the named insured policyholder (you), the identity of your insurance carrier, the policy number and policy period, and the monetary limits of the insurance policy. The certificate of insurance is evidence for the general contractor that you have the insurance policy you are required to have under the contract.

Continued on next page



Insurance Services | Risk Management | Employee Benefits

Providing the most innovative risk management, insurance and surety solutions for the construction industry.

It's what we do.

To learn more, contact
Cam Dickinson at 415.399.6308 or
Chuck Shoemaker at 415.399.6416.

Visit us online at www.wsandco.com.

© Woodruff-Sawyer & Company, 2007



Insurance

— good information for your business

Additional Insured Endorsements (cont.)

If the general contractor is merely seeking to obtain or verify your insurance information, then a certificate of insurance is the document they need. However, if you are seeking to add the general contractor or owner as an additional insured under your policy, or show that they have been added as an additional insured, then a certificate of insurance alone is not enough.

The certificate of insurance is **not** a contract between an insurer and the certificate holder, and does **not** create insurance coverage for the certificate holder. The lack of contractual relationship is clearly and conspicuously stated on a standard certificate of insurance, which states that the document does not “alter or amend” the insurance policy or policies listed therein.

Confusion often arises when a certificate reflects that the certificate holder “is to be added as an additional

insured” or “is an additional insured.” General contractors and subcontractors alike often believe that the certificate makes the certificate holder an additional insured under the policy. It does not. The certificate is merely evidence of the intent to add the general contractor to your policy, or evidence that the general contractor has been added, just as the certificate is evidence of your insurance policy.

An Additional Insured Endorsement Makes The General Contractor An Insured Under Your Policy

An additional insured endorsement is the piece of paper that actually adds the general contractor as an insured to your policy. While the certificate of insurance merely evidences the existence of the policy, it is not the policy. The additional



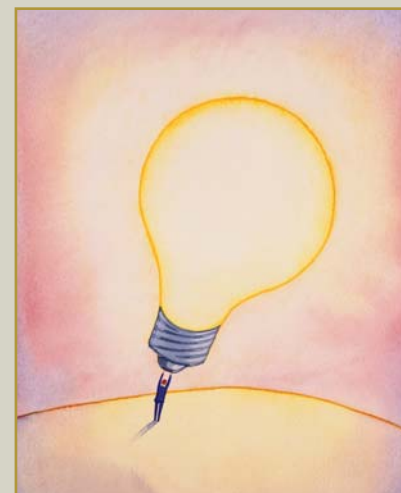
Car Rental Insurance (cont.)

4. Decline the Personal Accident Insurance unless another person is listed as a driver, and they are not an employee of the company.
5. Personal effects coverage is optional. Your own personal property should be covered under your homeowners or renters insurance policy.
6. Make sure all drivers are listed on the vehicle rental agreement. The extra cost per driver is worth the expense. If you do not, you may invalidate the coverage provided by LDW or CDW.
7. Do not drive a rental vehicle out of the country unless you have purchased special automobile insurance coverage ahead of time.
8. Report any accident in a rental car just as you would a corporate or personal vehicle. Notify your broker within 24 hours so they can preserve your rights and those of your insurance company.
9. Ask the rental car company for their local roadside assistance phone number. Do not rely upon the 1-800 number it is likely an out-of-state call center.
10. Inspect the car before driving it to make sure all obvious damage is noted ahead of time.

Other Suggestions

The corporate automobile insurance policy should contain the following coverage (show this article to your broker):

1. Coverage symbol 1 should be used on the policy. If symbol 1 is not allowed, the substitute is a combination of symbols 2, 8 & 9.
2. Add employee hired auto coverage form CA 2054 to the business auto policy. This makes the corporate auto policy coverage primary in the event of an accident involving a rented vehicle.
3. Remember — If you are renting a truck in your personal name, your own personal auto policy may not cover rental trucks, only rental cars. Check with your personal lines insurance broker to verify if you are covered.



insured endorsement, on the other hand, becomes part of the policy itself. That endorsement makes the general contractor an additional insured, and sets forth the circumstances in which the additional insured coverage applies.

To add the general contractor to your policy, you need to make a request to your insurance professional, i.e., your insurance agent or broker. Sometimes insurance professionals have direct authority from insurance companies to issue an additional insured endorsement themselves.

Other insurance companies require that the insurance professional submit your request in writing to their underwriters for approval, and the insurer or underwriter issues the endorsement upon approval.

Obtain A Copy Of The Endorsement Now, To Prevent Problems Later

Occasionally, things can go wrong. For example, an agent or broker may submit a request for additional insured status for the general contractor, and prepare a certificate

4. If you rent or lease vehicles for longer than 30 days, it is usually cheaper to add the rented vehicle to your list of covered vehicles.

Contractors that rent vehicles for business purposes are best served by covering the exposure under their business auto policy. The reasons include:

- You will have higher limits and broader coverage than what rental car companies generally provide.
- You are covered even if your employee breaches the rental car contract (allows another person to drive, drives off road, etc.).
- You can arrange your own legal defense with your insurance company rather than relying on the rental company's lawyers.

We recommend you discuss these issues with your broker before you rent your next vehicle. ♦

Contributed by Jim Untiedt, CPCU, ARM, Allied North America. Contact Jim at 510/578-2000.




of insurance reflecting that the general contractor is being added as an additional insured, but somehow the endorsement is never actually issued. The subcontractor and general contractor, not understanding the difference between a certificate of insurance and an additional endorsement, believe that everything is fine. Five years later, when a lawsuit arises and the general contractor tenders its defense to the subcontractor's insurer, they are both surprised when the insurer denies coverage on the grounds that the

Continued on next page

WE KNOW EXCAVATORS

NO ONE KNOWS EXCAVATORS BETTER THAN KOBELCO AND YOUR KOBELCO DEALER.

As a leading North American brand, Kobelco is known for innovation, reliability, operator comfort, and easy serviceability. We build hard-working high-performance machines with industry-leading lift capacities and the highest breakout forces.

<p>ZERO TAIL SWING COMPACTS. Five models range from 11.9 to 40.8 HP. Operating weights from 3,240 to 10,275 lbs.</p> 	<p>MID-SIZE. 54-HP zero tail swing or short radius units deliver big performance in tight quarters. Operating weights from 16,400 to 17,600 lbs.</p> 
<p>SHORT RADIUS. Four highly maneuverable models designed to work in crowded spaces. Operating weights from 31,750 to 57,300 lbs. 84 to 148 HP.</p> 	<p>BLADE RUNNERS. The productivity of an excavator and dozer in one machine. Operating weight of 35,270 and 43,700 lbs. 94 and 112 HP.</p> 
<p>CONVENTIONAL. Choose standard, long-reach, or high & wide configurations. Operating weights from 36,800 to 108,045 lbs. 112 to 315 HP.</p> 	



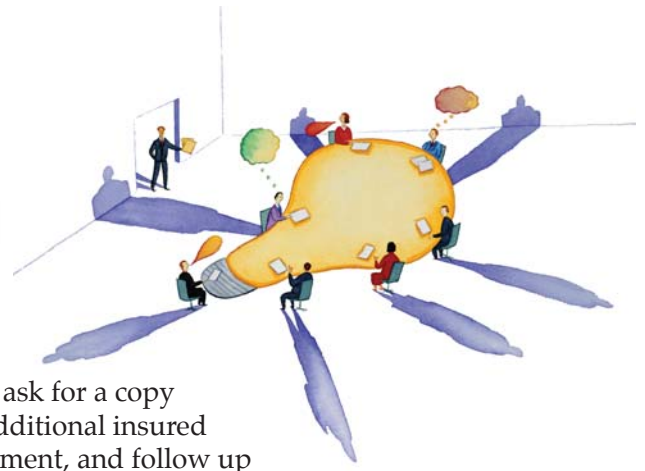
See the Excavator Expert – Your Kobelco Dealer.
www.kobelcoamerica.com

245 E. North Avenue
 Carol Stream, IL 60188 USA

©2006 CNH America LLC. Kobelco is a brand licensed to Kobelco Construction Machinery Company America LLC.

Insurance

— good information for your business



Additional Insured Endorsements (cont.)

subcontractor was never added to the policy and is therefore not an additional insured. Suddenly the general contractor and subcontractor find themselves not only fighting the lawsuit, but fighting each other, the insurer and/or the insurance professional over the additional insured issue. Don't let this happen to you.

Suddenly the general contractor and subcontractor find themselves not only fighting the lawsuit, but fighting each other, the insurer and/or the insurance professional over the additional insured issue. Don't let this happen to you.... it is critical that you obtain a copy of the additional insured endorsement in addition to the certificate of insurance.

Always ask for a copy of the additional insured endorsement, and follow up to make sure you receive it, regardless of whether or not you are required to provide a copy to the general contractor. While a certificate reflecting that the general contractor is an additional insured evidence of insurance when fighting the denial, it is no replacement for the actual endorsement; and no fight would be necessary if someone had actually insisted upon receiving a copy of the additional insured endorsement at the time it was supposedly issued. Therefore, it is critical that you obtain a copy of the additional insured endorsement in addition to the certificate of insurance.

Tips If You Are Drafting The Insurance Provisions Of A Subcontract

You may have occasion to employ subcontractors to work for you, and to seek to become an additional insured on their policies. The following tips will help ensure that your contracts with those subcontractors will result in the additional insured coverage that you seek:

1. Require that the subcontractor provide both a certificate of insurance and an additional insured endorsement;
2. Make sure contract distinguishes between a certificate of insurance and an additional insured endorsement;
3. Specify the scope of insurance coverage which is to be provided by an additional insured endorsement;
4. Make it a condition that before the subcontractor begins working on the project, the subcontractors provide both the certificate of insurance and an additional insured endorsement; and
5. Include a condition that should the subcontractor's policy be cancelled or terminated, he/she will not be allowed to return to the worksite without first obtaining insurance and providing an additional insured endorsement evidencing that you are an additional insured under the policy.

Over 50 years of experience

A:B

Lake Forest, San Francisco, Bakersfield, San Diego & Pittsburg, California
ARB, Inc. t:949.598.9242 www.arbinc.com

Underground Pipeline & Utility Construction

Continued on next page

Insurance

— good information for your business



A Little Effort Now, Can Save A Lot Of Effort Later

While it is important to understand additional insured endorsements, it is equally important that you have internal

business practices to ensure that you have complied with the insurance requirements of your subcontract with the general contractor-or that your subcontractors are complying with the insurance requirements of their subcontracts with you. Foresight and proper recordkeeping can eliminate headaches in the future, if and when the insurance coverage is actually needed. The following tips can help:

Julianne Seeley, Manager, Contract Admin.
ValleyCrest Companies



The bank of contractors

has over 20 years of on-the-job experience in public works

offers smarter ways to reduce your retention costs

puts your money to work through interest-earning escrow accounts

gives you online tools to analyze retention options

works hand in hand to help build your business.

Invest in you[®]

UNION
BANK OF
CALIFORNIA

Contractor Retention Escrow Services

Northern California - Nikki Affinito, (800) 660-4053

Industry Manager - Mark Reider, (800) 846-5821

Customer Service Manager - Cindy De Kruffy, (800) 669-8661

Visit us at unionbank.com/cre

©2007 Union Bank of California, N.A. Member FDIC

1. Have a designated person in your organization deal with insurance issues, monitor contract requirements concerning insurance, and ensure compliance with those terms;
2. Keep thorough records documenting all requests to your insurance professional and their responses;
3. Obtain and keep copies of all of your insurance policies;
4. Obtain and keep copies of all certificates of insurance and additional insured endorsements, along with the contracts to which they correspond;
5. The same applies if you are an additional insured on someone else's policy: obtain and keep copies of the certificate of insurance, additional insured endorsement, and relevant contract. Also obtain and retain a complete copy of the policy under which you are an additional insured. ♦

Contributed by Michelle Meyers and Susan Firtch of Burnham Brown. Michelle Meyers is an associate, and Susan Firtch is a member, of Burnham Brown, a business and litigation firm in Oakland. Their practice area is insurance coverage. In addition to representing and advising insurers, they also advise contractors and their counsel about insurance issues. Burnham Brown has multiple practice areas, including attorneys who defend various contractors in personal injury and construction defect claims. Contact Burnham Brown at (510) 444-6800, www.burnhambrown.com.