1. What is a Contract?
2. Why is Contract Review Important?
3. Common Insurance Requirements
4. How to Perform a Contract Review
5. A Few Strategies, Tips & Tricks
6. Questions & Answers

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An Introduction to Contract Review

What is a Contract?

Definition:
➢ A deliberate engagement between competent parties, upon a legal consideration, to do or abstain from doing, some act.

• Contracts can be:
  - Written or oral (verbal)
  - Implied (details are assumed) or
    Express (specific terms)

• Oral, implied contracts are more difficult to enforce.

• Some types of contracts, such as real estate purchases, must be written and express in order to be legally binding.

• Many endorsements require written contracts before coverage applies.
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What is a Contract?

Some examples of legal contracts:

• Lease of buildings, vehicles, or equipment
• Purchase order / supply
• Building construction
• Service contract
• Non-disclosure Agreement (NDA)
• Sale of real estate
• Merger or divestiture agreement
• Consulting agreement
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What is a Contract?

Four Parts to a Legal Contract:

1. **Offer and Acceptance** by two or more parties
   - all parties must enter into contract willingly
2. **Legal Purpose**
   - all parties to a contract must intend to be legally bound by the contract
   - contract must be for a legal purpose
3. **Consideration**
   - one party promises something to the other party in exchange for something from the other party
   - May be money, goods or services
4. **Legal Capacity**
   - Competent Parties – legal age, appropriate mental capacity
     - Note - Contracts must be properly signed and dated to be binding.
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Poll Question #1

How would you rate your level of knowledge of contract review?:

- None – what is contract review??
- Beginner
- Some knowledge, but not an expert
- Expert
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Why is Contract Review Important?

Provides opportunity to negotiate for:

Mitigation of contractual risk that your company retains

Coordination between indemnification and insurance sections

Appropriate allocation of risk between contracting parties prior to loss
  - Unassigned risks tend to cause conflict between contracting parties and insurance carriers at time of loss

Self-insuring when in Client’s best interests to do so:
  - insurance coverage may be unavailable, difficult, or costly to obtain
  - contract value may outweigh risk of loss

Affects your company’s bottom line

Uninsured, retained & increased losses =
  - Increased loss ratios
  - Higher premiums
  - Increased collateral requirements
  - Decreased profitability
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Why is Contract Review Important?

Affects business relationships with other contracting parties:
- Government Entities
- Customers
- General Contractors / Subcontractors
- Vendors / Suppliers
- Landlords / Property Owners

Other benefits:
- Avoid breach of contract, penalties & fines
- Identify retained vs. transferred risks

Affects ability to manage your company’s insurance program:
- Encourages communication on contract review issues:
  - Internally between Risk Management, Legal and business segments
  - Externally between:
    - company & its broker(s)
    - company & other party(ies) to contract
- Ensures a company’s insurance program responds to contractual needs with respect to:
  - Any changes needed to insurance
  - Obtaining new policies
  - Securing carrier approval to insure risks
Commonly Requested Casualty Coverage:

- **General Liability** – coverage for Bodily Injury and Property Damage to 3rd parties arising out of operations, premises, personal/advertising injury, and products

- **Commercial Auto** – Bodily Injury and Property Damage to 3rd parties arising out of the use of motor vehicles

- **Workers Compensation** – coverage for medical costs and wage replacement arising out of injuries or disease to employees, plus Employers Liability – covers some instances when the employee can sue the employer.

- **Umbrella/Excess** – typically provides additional limits above underlying General Liability, Automobile Liability, and Employer’s Liability

**Other Commonly Requested Coverage:**

- Property
- Cyber Liability
- Pollution Liability
- Professional Liability
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Common Insurance Requirements

Commonly Requested Items

• Additional Insured
  • 3 Factors Determine Coverage
  • 3 Levels of Coverage
    • Limited, Partial, Broad
• Primary and Non-contributory
• Waiver of Subrogation
• Notice of Cancellation, Non-renewal and Material Change
• Proof of Insurance - Certificates of Insurance
• Minimum required AM Best Rating for carriers
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Poll Question #2

How much of your time do you typically spend on contract review in a given week?

- None
- 1% to 10%
- 11% to 25%
- 26% to 50%
- More than 50%
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How to Perform a Contract Review

1. Confirm deadline
   - When is the contract review needed by?

2. Identify the following:
   A. Who is who?
      - Which party is your company?
      - Who is the other party?
      - What is the relationship between both parties?
      Examples:
      - Landlord & Tenant
      - Supplier & Vendor
      - General Contractor & Sub-contractor
      - Customer & Supplier
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How to Perform a Contract Review

B. What is the purpose of the contract?
- Tip - Look for the “Scope of Work”

C. What is the contract term?
- When does the contract begin and end?
- How long is the duration of the contract?

3. Briefly scan through the entire contract
- All pages attached? If not, request missing pages.
- Any missing exhibits? If so, request copies.
- Find the indemnity, limitation of liability, and insurance sections.

Why do you need to see the entire contract?
- You may be missing some insurance requirements and other important information, such as who is who, indemnification requirements, contract term, limitation of liability, definitions, scope of work, etc.
4. Read through indemnification, limitation of liability and insurance sections carefully.

5. Search for indemnity and insurance-related wording throughout contract

- Common words to look for:
  1. “Indemni” as in Indemnification / Indemnify / Indemnity
  2. Liability
  3. Insurance
  4. Sole Negligence

6. Highlight any items that may be problematic, that you are unsure about, and/or that may require research.
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How to Perform a Contract Review

7. Research any items that you are not sure of.
   - Black’s Law Dictionary on-line version can help with legal definitions.
   - General on-line searches can also help.

8. Ask if you have questions.

9. Preferred format is Word.
   - Much easier to revise and allows for tracking changes.

Contract Review Tip - If contract is in pdf format, try to save as a Word document or use Adobe Pro before you begin review. This makes red-lining the insurance requirements much faster and easier.
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How to Perform a Contract Review

11. If needed request:
   • endorsements
   • quotes for new coverage
   • certificates of insurance
   • bonds

12. File contract review correspondence.
Contracts should be reviewed before they are signed and as soon as possible during the negotiating process.

Suggest push back on onerous insurance and indemnity/hold harmless requirements.

- Often terms can be negotiated to more favorable terms. If you don’t ask, you don’t get.

Compare Indemnity scope to Additional Insured scope.

Who wrote the contract?

- Beware! Whoever wrote it will have written it with terms and conditions in their own favor.

Beware of requirements for:

- Minimum / full policy limits
- Specific wording on Certificates of Insurance (COI’s)
- Use of non-Acord COI forms
- Specific endorsements – especially additional insured endorsements
  - Some examples: ISO endorsement forms CG 2010 11/85, CG 2010 10/01 & CG 2037 10/01, or equivalents
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Questions?

Thank you for your time!

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