

# CLIENT INFORMER

## THE NEED FOR PRINCIPALS TO HAVE PUBLIC LIABILITY INSURANCE FOR CONSTRUCTION PROJECTS

The common approach to arranging public liability insurance for construction projects is for the contractor to arrange this insurance. However, principals still need to ensure that their own public liability insurance will respond to claims arising from an act of the principal.

The reason for this is that, while a contractor is required to provide public liability insurance for a project under NZS3910:2013 or other standard conditions of contract used in New Zealand or overseas, these contract conditions only cover the principal for the principal's vicarious liability arising from the contractor's performance of the works. There is no cover for a principal under the contractor's policy for the principal's own acts or omissions in respect of the works.

Additionally, under most conditions of contract, a contractor is not liable to the principal for loss, liability, or cost arising from:

- The permanent use of or occupation of land by the works and the right of the principal to carry out the works on the site
- Injuries to persons or damage to property or interference with the rights of others, which is the unavoidable result of carrying out the works in accordance with the contract
- Any act or omission of the principal or other parties engaged by principal that the principal is responsible to the contractor for (such as a principal's designer)

Where the contractor suffers a loss as a result of these items, the principal indemnifies the contractor for that loss. Of particular note is that the third point above includes liability arising from defective design – where a principal has provided a design and an error in the design causes damage or injury to a third party (i.e. someone that is not the principal or the contractor), this exposure is then a principal's risk.

Because a contractor is only required to insure the principal for their vicarious liability under their policy (and does not have to insure for liability that the contractor is not responsible for), there are areas that are insurable that the principal will not be covered for without their own public liability policy in place. It is for this reason that a principal needs to ensure that their own public liability insurance will respond.

Unless construction activities are part of the principal's normal ongoing activities, their public liability policy will not necessarily automatically cover this exposure. However it should be possible to extend a public liability policy to cover the principal for liability arising from a construction project although, depending on the project, there may be some cost involved to do so.

Contractors are not generally willing to provide full cover for principals under their annual public liability policy. Amending the contract conditions to require this will usually result in a project specific public liability policy being offered at an additional cost – in some cases this may be the best insurance solution for the project.

A project specific public liability policy provides many benefits over the use of individual annual policies including:

- The policy is dedicated to the project so claims for other projects do not affect the project
- The policy insures all parties as full insureds while being able to make claims against each other and provides certainty that all parties involved in the project are insured

- The extent to which the individual parties to a contract caused the third party loss does not need to be proved – if a claimant can prove that their loss results from the negligence of the parties performing the works then the project specific policy will respond, enabling claims to be settled quicker than relying on each individual's policies
- There is reduced administration required as you do not need to periodically check that the contractors and subcontractors have renewed their annual insurances

To sum up, even though contractors are required to provide public liability insurance, the contractor's public liability policy cannot fully protect a principal. It is therefore recommended that principals have their own cover as well, or a project specific policy fully insuring all parties be used.

### FOR FURTHER INFORMATION

For more information on this topic or advice on your risk and insurance programme please call us on **0800 627 744**.

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