

Contractual Risk Transfer

Getting to the CORE of perils caused by others

NTI – May 6, 2015



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Risk Transfer

What is Risk Transfer?

A risk control strategy to convey, shift or transfer risk from one party to another through contract, assumption, insurance or other means.

Goal : Allocate risk equitably, placing responsibility for risk on designated parties consistent with their ability to control and insure against that risk.



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Risk Transfer

How is Risk Transfer accomplished?

- Insurance
- In contracts through:
 - hold harmless agreements
 - indemnity provisions
 - transfer / assumption



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Risk Transfer

How is Risk Transfer accomplished?

Contract examples:

- Purchase order agreements
- Construction or service contracts
- Leases of premises or equipment
- Consulting agreements



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Risk Transfer

Why is Risk Transfer Important?

- Taking on other's liability can be costly
- Control the type and magnitude of the liabilities you assume
- Identify opportunities to manage risk
- Save money by lowering your overall costs



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Risk Transfer Scenario

- A property manager hires a roofing contractor to repair storm damage.
- The roofer's torch accidentally sets off a fire, destroying the entire building, putting the property out of use or commission for nine months.
- There is no doubt that the roofing contractor is responsible for this loss.

Who Pays?



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Risk Transfer Scenario

Who Pays?

- The contractor's insurance limits are so low they cannot begin to cover all the damages. (Or even worse, the insurance lapsed!)
- To pay for the damages the owner (possibly NRMCM member) has to file a claim with its own insurance carrier. This will impact the owner's and the NRMCM Program's loss history, and, in turn, possibly future insurance premiums.
- The Property Manager hired the contractor and reviewed the insurance and the contracts.



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Protecting Your Assets – Layers of Protection

- Certificates of Insurance
- Additional insured status
- Indemnification provisions in contracts



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Protecting Your Assets – Layers of Protection

Certificates of Insurance

- A document issued by an insurance company or its representative (eg. Broker) to **evidence the existence of insurance**
- Includes important information
- A snapshot of coverages in place on the day it is issued
- It does *not* provide coverage



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Strategy for Protection

Certificates of Insurance:

- Require Certificates of Insurance from all vendors who perform services on your properties, including GCs, subcontractors (plumbers, electricians, tenants), service providers and other parties (like landscapers, snow removal, appliance repair.)
- Determine appropriate insurance coverages and limits
- Review Certificates of Insurance
- Enforce Certificate of Insurance requirements
- Monitor Certificates of Insurance: For scope and expiration
- Create a filing system



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Protecting Your Assets – Layers of Protection

Certificates of Insurance – What to look for?

*When in doubt, “**ASK**”! No question is unimportant*



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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

08/08/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

| | | | |
|---|--|---|--|
| PRODUCER | | CONTACT NAME: | |
| Hub International Northeast Limited- LI | | PHONE (A/C, No, Ext): 516-677-4700 | |
| 100 Sunnyside Blvd | | FAX (A/C, No): 516-496-4040 | |
| Woodbury NY 11797 | | E-MAIL ADDRESS: erin.corcoran@hubinternational.com | |
| INSURED CONTRACTORS NAME AND ADDRESS OR TENANTS NAME AND ADDRESS | | INSURER(S) AFFORDING COVERAGE | |
| | | INSURER A: COMPANY COMPLETE NAME | |
| | | INSURER B: COMPANY COMPLETE NAME | |
| | | INSURER C: COMPANY COMPLETE NAME | |
| | | INSURER D: COMPANY COMPLETE NAME | |
| | | INSURER E: | |
| INSURER F: | | NAIC # | |
| Cus#346039 | | 39217 | |
| | | COMPLETE CARRIER NAME SHOULD BE SHOWN | |



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COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE | ADDL INSR | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS |
|----------|--|-----------|----------|---------------|-------------------------|-------------------------|--|
| A | GENERAL LIABILITY | X | X | POLICY123 | 04/01/2014 | 04/01/2015 | EACH OCCURRENCE \$1,000,000 |
| | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY | | | | | | DAMAGE TO RENTED PREMISES (Ea occurrence) \$250,000 |
| | <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR | | | | | | MED EXP (Any one person) \$5,000 |
| | <input checked="" type="checkbox"/> \$0 Deductible | | | | | | PERSONAL & ADV INJURY \$1,000,000 |
| | GEN'L AGGREGATE LIMIT APPLIES PER: | | | | | | GENERAL AGGREGATE \$2,000,000 |
| | <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC | | | | | | PRODUCTS - COMP/OP AGG \$1,000,000 |
| | | | | | | | EMPLOYEE BENEFITS \$1,000,000 |
| B | AUTOMOBILE LIABILITY | | | POLICY123 | 04/01/2014 | 04/01/2015 | COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 |
| | ANY AUTO | | | | | | BODILY INJURY (Per person) \$ |
| | ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS | | | | | | BODILY INJURY (Per accident) \$ |
| | HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS | | | | | | PROPERTY DAMAGE (Per accident) \$ |
| | | | | | | | \$ |
| C | <input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR | | | POLICY123 | 04/01/2014 | 04/01/2015 | EACH OCCURRENCE \$5,000,000 |
| | EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE | | | | | | AGGREGATE \$5,000,000 |
| | DED <input checked="" type="checkbox"/> RETENTION \$0 | | | | | | \$ |
| D | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY | | | POLICY123 | 04/01/2014 | 04/01/2015 | <input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER |
| | ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) | Y/N | N/A | | | | E.L. EACH ACCIDENT \$1,000,000 |
| | If yes, describe under DESCRIPTION OF OPERATIONS below | | | | | | E.L. DISEASE - EA EMPLOYEE \$1,000,000 |
| | | | | | | | E.L. DISEASE - POLICY LIMIT \$1,000,000 |
| | | | | | | | |

CURRENT TERM

REQUIRED LIMITS AS PER CONTRACT

REQUIRED COVERAGES AS PER CONTRACT

PROJECT LOCATION AND DESCRIPTION INCLUDED

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

CERTIFICATE HOLDER IS INCLUDED AS **ADDITIONAL INSURED** FOR
PROJECT LOCATED AT 123 MAIN ST - ROOF REPAIR

ADDITIONAL INSURED STATUS IS SHOWN

WAIVER OF SUBROGATION AND NOTICE OF 30 DAY CANCELLATION APPLIES
COVERAGE IS **PRIMARY AND NON-CONTRIBUTORY**

CERTIFICATE SHOWS REQUIRED CONTRACT WORDING FOR WAIVER OF SUBROGATION,
NOTICE OF 30 DAY CANCELLATION AND PRIMARY AND NON-CONTRIBUTORY COVERAGE

CERTIFICATE HOLDER

CANCELLATION

MEMBER NAME

CERTIFICATE HOLDER
SHOULD INCLUDE ALL
BUILDING OWNER
ENTITIES

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE
THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN
ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



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Protecting Your Assets – Layers of Protection

Additional Insured Status

- You are named on the policy along with the policy holder
- It is more than a document saying insurance is in force. It actually provides coverage by naming you as someone with rights under the insurance policy
- Get evidence of Additional Insured status



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Protecting Your Assets – Layers of Protection

Additional Insured Status – Why?

- Provides coverage even if a court invalidates the indemnity provisions in your service contract
- Provides you with a legal right against the insurance carrier for coverage
- Gives you certain rights under your lessee's or subcontractor's insurance policy, particularly with defense coverage AND the loss is theirs
- Discourages your lessee's or subcontractor's insurance company from subrogating against you when a loss is caused by your acts or omissions



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Protecting Your Assets – Layers of Protection

Contracts and leases: Consider and include, separate and apart from insurance:

- Indemnification agreements
- Hold harmless provisions
- Insurance requirements
- Additional insured status
- At least 30 days prior notice from the insurer of cancellation
- Other specific contract clauses

Always consult your legal counsel when reviewing, drafting or signing contracts and even major purchase orders!



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Strategy for Protection

Contracts (that you ask others to sign)

- Secure signed, written contracts with subcontractors, tenants, and service providers.
- Have your attorney draft a contract or purchase order that:
 - Includes an indemnity and hold harmless clause that protects you from the acts or omissions of the other party and that is applicable for the job.
 - Requires that you be named as an “additional insured” under their general liability policy and that they deliver evidence (insurance certificates) to that effect.

Always consult your legal counsel when reviewing, drafting or signing contracts and major purchase orders!



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Strategy for Protection

Contracts (that others asked you to sign)

- Carefully review contracts before signing. Read the fine print! Be especially vigilant for releases or limitations on their liability
- Review contract language with legal counsel to determine the extent of hold harmless protection requested
- Develop a contract review checklist
- Additional insured status
- Check the insurance section of job contracts for hold harmless provisions, and for mandated coverages that aren't provided by your policies



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Strategy for Protection

Contracts (that others asked you to sign) - continued

- Check the insurance section of job contracts for hold harmless provisions, and for mandated coverages that aren't provided by your policies
- Check about time requirements to file claim
- Require a certificate (COI) and a copy of the policy

Always consult your legal counsel when reviewing, drafting or signing contracts and major purchase orders!



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Contract Language

- **INSURANCE PROVISIONS** – the Insurance Agreement should clearly state that Vendor must name Customer as an additional insured on Vendor's liability policy.
- You be the judge --- which contractual provisions should vendors provide for your properties.



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Contract Language

- INDEMNITY PROVISIONS – the scope of the Vendor’s obligation to indemnify the Customer should be as broad as possible.
 - **Broad** – “Arising Out of” (need not show that Vendor was negligent)
 - To the fullest extent permitted by law, Vendor shall indemnify, defend and hold harmless Customer, its officers, directors, agents and employees (collectively, the “indemnified parties”) from and against (1) any and all claims, suits, damages, losses or liabilities for injuries (including death) to persons or property arising out of, or in connection with, Vendor’s performance of the work specified under this contract or any related sub-contract; and, (2) any and all costs, expenses and fees, including but not limited to reasonable attorneys’ fees and expenses incurred in connection therewith and in connection with the enforcement of this indemnification provision. This indemnity specifically contemplates full indemnity in the event of liability imposed against an indemnified party without negligence and solely by reason of statute, operation of law or otherwise, and partial indemnity in the event of any actual gross negligence on the part of an indemnified party causing or contributing to the underlying claim, in which case indemnification will be limited to any liability imposed over and above that percentage attributable to actual fault, whether by statute, operation of law or otherwise, to the fullest extent permitted by law.



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Contract Language

- **Less Broad** – “Resulting From or Caused by” (requires showing that loss was caused by Vendor’s actual negligence)
- To the fullest extent permitted by law, Vendor shall indemnify, defend and hold harmless Customer, its officers, directors, agents and employees (collectively, the “indemnified parties”) from and against (1) any and all claims, suits, damages, losses or liabilities for injuries (including death) to persons or property resulting from or caused by, Vendor’s performance of the work specified under this contract or any related sub-contract; and, (2) any and all costs, expenses and fees, including but not limited to reasonable attorneys’ fees and expenses incurred in connection therewith and in connection with the enforcement of this indemnification provision.



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Contract Language

- **Least Broad** - “Vicarious Liability and/or Sole Negligence”
 - To the fullest extent permitted by law, Vendor shall indemnify, defend and hold harmless Customer, its officers, directors, agents and employees (collectively, the “indemnified parties”) from and against (1) any and all claims, suits, damages, losses or liabilities for injuries (including death) to persons or property resulting from, or caused solely by the negligence or willful misconduct of Vendor in its performance of the work specified under this contract or any related sub-contract; and, (2) any and all costs, expenses and fees, including but not limited to reasonable attorneys’ fees and expenses incurred in connection therewith and in connection with the enforcement of this indemnification provision.



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Contract Language

- **INSURANCE PROVISIONS** – the Insurance Agreement should clearly state that Vendor must name Customer as an additional insured on Vendor’s liability policy.
 - **Bad Language:** Vendor shall purchase and maintain general liability insurance and provide Customer with a Certificate of Insurance evidencing such coverage. This language, by itself, does not obligate the Vendor to add Customer as an additional insured to its policy. It only requires the Vendor to purchase liability coverage for itself.
 - **Better Language:** Vendor shall purchase and maintain general liability insurance for the “mutual benefit” of Vendor and Customer.
 - **Best Language:** Vendor shall purchase and maintain general liability insurance naming Customer as an Additional Insured.



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Recordkeeping

KEEP RECORDS. No matter what strategy you develop in regard to risk transfer, it is vitally important that you keep records. Documentation of contracts and agreements will be the key to your defense in the event of a lawsuit.

Retain purchase orders, leases, other contracts, and certificates of insurance in accordance with all applicable law and regulations in the jurisdictions and industries in which you operate. Consult your legal counsel for information and advice concerning any laws and regulations applicable to you



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Renters' Insurance

Renters' Insurance is taken out by residents (“renters”) and provides them with:

- **Property Insurance** – Covers the resident's contents against loss due to fire, flood, theft and vandalism, and from routine weather events — wind, rain, heavy snow, lightning. Most leases release the landlord from liability for residents' contents. In addition, the NRMCM policy, like most “landlord's policies” does not cover the contents of your residents' homes.
- **Liability Protection** – Covers their liability to third parties. If someone was injured in the home and sued the resident, its legal expenses and any court award would be covered.
- **Living expenses** – Covers the resident's living expenses should the resident have to vacate due to fire or flood. Residents' relocation and temporary living expenses are excluded from most leases.



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Renters' Insurance

Renters' insurance is the first step towards homeownership because homeowners' insurance is required by all lenders / mortgagees / mortgage holders, and coop and condo associations.

Renter's insurance is less expensive than many people realize: a basic policy costs about \$300 a year for around \$50,000 worth of property protection. Many renters who go without are under the mistaken impression that their landlord's policy covers their possessions.

Renter's insurance may provide a source of recovery if a resident has liability to the landlord. Ex. The Resident tampers with a STFS and a fire ensues.



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Thank You!



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