

Risk Transfers

A RISK TRANSFER ASSESSMENT

In construction, every project starts, finishes, and is controlled by the terms of a contract. Contractual risk transfer is the agreement between parties, where one party assumes the financial responsibilities of another concerning claims and damages. These contracts include insurance procurement requirements, which stipulate the types and amounts of coverage each party agrees to provide. It is essential to understand the agreement in its entirety and obtain the proper insurance before beginning a project.

At Gramercy Risk, we review certificates of insurance provided by our insured's subcontractors, and compare them to the insurance requirements in the contract. Many need corrections or additional documents to past muster. Here are some the leading discrepancies we find:

➤ **Additional insured endorsements**

Additional insured endorsements can be added to commercial general liability, automobile liability, umbrella/excess liability, and some other policies. They define the scope of the additional insured coverage. Depending on specific endorsement used, some offer a broader definition of "who's insured". At Gramercy, we advise our clients to request the CG 2037 04/13 and CG 3028 04/13 additional insured endorsements for completed and ongoing operations. The CG 2037 provides additional insured status under the CGL policy to a project owner or contractor identified in the endorsement schedule. The CG 2038 provided additional insured status on an automatic basis, eliminating the need to separately add parties to a schedule. The CG 2038 automatically provides additional insured status to owners and contractors that meet the endorsement criteria for such status.

➤ **Licensed and Admitted Carriers in New York**

At Gramercy, we advise our clients to require subcontractors to have their insurance placed with a licensed and admitted carrier in the state of New York (or elsewhere, as needed). An admitted carrier complies with state regulations set by the Superintendent of Insurance and there is protection through the Property/Casualty Insurance Security Fund; if the insurance company fails financially, the state will step in and assume the responsibilities of the insolvent carrier to make payments, as allowed under the Fund. The state verifies an admitted carrier's insurance policy forms, and rates, comply with state requirements before they can operate in New York. In some cases, a selected subcontractor may have coverage through a non-admitted insurer ("Excess or Surplus Lines Insurer"); speak with your broker or us before hiring a subcontractor with this type of coverage.

➤ **Waiver of Subrogation and Primary Noncontributory Endorsements**

A waiver of subrogation endorsement prevents the subcontractor's insurance carrier from seeking reimbursement from you, as the general or prime subcontractor. The primary and non-contributory endorsement states that the subcontractor's insurance policy will extend coverage to the additional insured first and won't seek contribution from that entity's policy. Waiver of subrogation endorsements help transfer risk as they protect you from contributing to a loss that occurred on your job site. Primary and noncontributory endorsements are valuable to request from your subcontractors as they stipulate the order in which multiple policies are triggered and provide coverage as a result of one loss.

At Gramercy Risk, we work with our construction clients and their insurance representatives to ensure your contract includes the appropriate risk transfer language. We will work with your subcontractors' brokers to ensure the certificate of insurance they provide complies with your agreement requirements. If you have any questions or would like assistance in this area, please reach out to either Ally Nelson (anelson@gramercyrisk.com) or Robert Bambino (rbambino@gramercyrisk.com) at Gramercy Risk Management.