

## **CONSTRUCTION CONTRACTS INSURANCE REQUIREMENTS PROVISIONS— AUTOMOBILE LIABILITY INSURANCE**

Most builder and general contractor contract forms impose various requirements for subcontractors and suppliers to maintain automobile liability insurance. There are two main reasons that auto liability coverage is required. The first reason is to assure the builder or contractor that the subcontractor or supplier has insurance coverage to respond to any liability it may incur. This liability relates to a situation in which the subcontractor's or supplier's vehicles cause any bodily injury or property damage. The second reason is to provide adequate coverage to support any indemnity provision that exists in the contract. To the extent the builder or contractor is sued by a third party as a result of the vehicle operations of a subcontractor or supplier, the builder or contractor will want this claim handled by the subcontractor or supplier through the indemnity provision in the contract and the insurance in place to back-up such indemnity obligation.

There are a variety of options or approaches builders and contractors choose when it comes to auto liability insurance requirements. Generally, they will require that coverage exist under a standard Insurance Services Office automobile policy form, or the equivalent.

Here is an example of language that states automobile liability insurance requirements:

**Subcontractor shall maintain business auto liability insurance with a total limit of not less than \$1,000,000 each accident, covering any auto—including all owned, hired and non-owned autos. Business Auto Coverage shall be written on a standard ISO form or a substitute form providing equivalent liability coverage.**

This sample language essentially details three particular requirements that must be met. First, the limits under the auto policy must not be less than \$1 million each accident. Second, the insured is obligated to provide what is referred to as "any auto" type of coverage. And third, a standard ISO policy form or something equivalent is required.

The first requirement of a limit of \$1 million each accident is a common limit amount requested by builders and general contractors, and should be relatively easy for subcontractors and suppliers to comply with. If the subcontractor's or supplier's limits are less, the limit amount needs to be negotiated and revised.

The second requirement from the example is the most difficult of the requirements to understand. Here the builder or contractor is asking for what is referred to as "any auto" coverage. This type of coverage includes each of the following types of coverages: "owned", "hired" and "non-owned coverage". "Any auto" coverage is the broadest of all types of coverage, and includes these three types of coverage.

Owned vehicle coverage only comes into play if a company-owned vehicle is damaged in a collision, if it damages another vehicle, or if it causes bodily injury to pedestrians or drivers of other vehicles. The key distinction is that the vehicle must be owned by the company.

Non-owned vehicle coverage does not apply to company-owned vehicles, but instead to employee-owned vehicles involved accidents with other vehicles. In order for this coverage to apply, the accident must occur while the employee is working in the course and scope of his employment. For example, if a subcontractor employee is involved in an accident that causes property damage or bodily injury, this coverage would protect the company as well as the individual.

Hired vehicle coverage applies to rented or hired vehicles that damage another vehicle or injure another person. For example, if a subcontractor or supplier hired a trucking company to deliver materials to the jobsite and the driver was involved in an accident, the trucking firm's insurance would pay first. Then, the subcontractor's or supplier's insurance would pay any remaining amount owed up to the limits of the policy.

Now, let's compare "any auto" type coverage with lesser coverage, which is referred to as scheduled vehicle coverage. This type of coverage applies to company-owned vehicles involved in an accident, but only if the vehicle is specifically listed in the commercial automobile insurance policy. The scheduled vehicle coverage, which may be less expensive, is not the preferred type. One reason for this is because a company may forget to add a new truck and trailer, and therefore no

coverage would be available for that vehicle or trailer, unlike with “any auto” coverage. To better understand the differences in coverage between any auto and scheduled vehicle coverage, let’s look at an example.

**CASE BREAK:**

A supplier contracts out the delivery of its materials to a local trucking company. While the transportation contract stipulates that the trucking company will maintain “any auto” commercial automobile liability coverage, the only coverage shown on the certificate of insurance was “scheduled vehicle” coverage. Since the local trucking company had no available trailers, it was allowed to use the trailers owned by the supplier. During the delivery, an accident occurred and a person was seriously injured. Neither the truck nor the trailer involved in the accident were shown as scheduled vehicles on the trucking company’s insurance policy. Therefore, there is no coverage for the accident from the trucking company’s insurer. The trailer, however, was covered on the supplier’s automobile policy because it belongs to the supplier, who has any auto coverage. Consequently, the injured person asserts the driver causing the accident is covered under the supplier’s insurance policy since it was operating a trailer owned by the supplier. This was definitely not the supplier’s intent. Under normal circumstances, the supplier would not have any liability to the injured person. This is because the negligence that caused the incident, and therefore the claim, was the fault of the independent truck driver—not the supplier.

Let’s now look at the third requirement from our example which reads: “Business Auto Coverage shall be written on a standard ISO form or a substitute form providing equivalent liability coverage.”

Here, the builder or contractor requires a standard ISO form policy or something equivalent. This be a fairly easy requirement for subcontractors and supplier to meet.