

MANAGING RISK: SERVICE CONTRACTS

Did you know that when you hire a contractor to perform maintenance or service on your Telco equipment, or to perform work such as plant construction or tower service on your behalf, you could be unknowingly assuming the liability for the contractor's work, or for his workers compensation coverage, under your business insurance? It's true - if the contractor has no insurance, or has very low coverage limits, your business may be held responsible for the contractor's negligent actions. There are two ways to manage this risk - by obtaining certificates of insurance, and by requiring written contracts which include provisions to limit your liability.

A certificate of insurance is a document provided by a contractor's insurance agent verifying the coverage's and limits of insurance the contractor has in force for the stated policy period. It is critical that the contractor have workers' compensation insurance in force to cover job-related injuries that may occur to his employees, and liability insurance to cover damage from negligent or wrongful acts the contractor or his employees may commit. The certificate of insurance will confirm the amount of insurance and types of coverage in force, and the effective and expiration dates of the policies.

All contractors should be required to provide a certificate of insurance prior to beginning work, as part of the job terms. When you receive the certificate, make sure to confirm that it reflects current policy period dates. You may also want to contact the contractor's agent or insurance company directly to verify that the coverage has not been cancelled, suspended, or had the limits changed since the certificate was printed. You should always require that the contractor carry liability insurance limits at least equal to the liability limits you carry on your policy.

All contract jobs should be performed under terms of a written contract. Contracts specify and clarify the work to be performed, the time frame for work completion, the cost of the work to be performed, responsibilities and expectations of each party, and any penalties for non-compliance by either party. Be sure to read all pre-printed "standard" work contracts presented by a contractor proposing to do work for you, and have them reviewed by your company's legal counsel to make sure you aren't agreeing to assume responsibility for an unrecognized liability. Unitel policyholders should require the following regarding all work performance contracts, and particularly for contracts for work on towers, trenching or other high hazard operations:

- Include a "hold harmless" agreement, written in your favor, in the contract - this means that the contractor agrees to assume all responsibility, and hold you harmless, for all future losses, claims, and expense arising from actions or omissions of the contractor, his employees or his agents in performing work under the contract, regardless of fault.
- Request that your company be named as an "additional insured" on the contractor's general liability policy - this endorsement makes the contractor's liability insurance primary, not yours, in the event you are sued for an allegation of negligence related to the work being performed.
- Request a "waiver of subrogation" endorsement in your favor on the contractor's workers' compensation policy - this provision bars the contractor's workers' compensation carrier from attempting to recover medical costs and lost wages paid to injured contractor employees from your general liability and umbrella liability policy, usually based on allegations of your company's negligence.

All contracts should be reviewed by your competent local legal counsel. If you have any questions relating to managing risk under service contracts, please contact Unitel Risk Management Department listed at the end of this newsletter.