



What Do You Mean – I'm Not Getting Paid?

After all your planning, estimating, bidding and hard work, the General Contractor's Compliance Department says you are not getting paid. Why? Your insurance doesn't match their requirements. You call your insurance agent and they say- what?

How does this happen? Typically it is a breakdown between your contract obligations and the insurance that you purchased.

It's Just a Certificate of Insurance

Insurance is difficult to understand as well as a high expense factor to your business. Many contractors believe that as long as they have general liability and workers' compensation coverage and a Certificate is sent to the general contractor, they are compliant with their contractual obligations. Not so. The additional insured wording is the most critical component of the certificate. Often, certificates are issued by the lowest paid employee in the insurance agency with the least amount of experience. An improperly issued certificate can delay payments owed to you or worse yet, leave you with an uncovered claim.

Before You Sign Any Contract

Check the bid specification requirements to see if the General Contractor has listed any insurance requirements. Your bid submission should show the types of insurance coverage you carry, including the limits of insurance; the additional insured endorsement that you can provide; primary and non-contributory liability insurance; waiver of subrogation on the general liability policy.

After you receive the work order, review the insurance requirements section and forward a copy of those requirements to your insurance broker as soon as possible. It is critical that you resolve any certificate issues prior to starting the job rather than discovering the non-compliance at the time your first payment is due. Cash flow is king, and even a delay of one week can have devastating consequences. The good news is that you can control this and avoid these scenarios completely with a little planning and some cooperation from your broker.

Contractual Liability Issues That Will Cost You

Your contractual liability exposure arises when GC and/or Owner get sued by an injured party as a result of the job or because the owner claims the property is defective as a result of the work performed, you will pay the attorney fees, court costs and any damages won by the

plaintiff. Insurance covers that, right? Well, sort of. One hundred percent of the time, you are agreeing to pay for every type of situation that may arise while you have purchased insurance with many exclusions removing coverage. Just because you sign a broad contract does not mean the insurance company is going provide the protection level required by the contract.

For example, if you contractually agree that the General Contractor will have choice of his/her legal counsel to provide defense in the event of a loss (which is common), you will likely be footing the bill yourself. Your insurance policy specifically states that they alone have the right to determine the legal defense that will defend the claim.

Additional Insured – General Liability Insurance

Sometimes the construction contract will require a specific endorsement, CG 20 10 11 85. This November, 1985 edition date is not always available and so you will likely see the words “or its equivalent” inserted into the contract. The problem is that many contracts do not define what the equivalent is. The commonly accepted equivalent for the industry is a combination of two endorsements, the CG 20 10 07/04 and the CG 20 37 07/04. These endorsements are more restrictive and are not true equivalents. Determining what your general contractor defines as “the equivalent” at the onset is critical. Otherwise, you will end up non-compliant resulting in either being kicked off the job or not being paid. Again, this can all be avoided by a little due diligence on your end.

The License Board and You

Let us assume that your company has had one of the above issues that has resulted in a cash flow crunch. You are unable to pay your next workers’ compensation payment and the policy is cancelled. Subsequent to that, your license is suspended immediately. Current statutes allow the general contractor to withhold payment on any project that you were working on when the license was suspended. They also have the right to recoup funds paid to your company prior to the suspension but part of the same project. Even if you get your license re-instated you are not entitled to the money previously owed to you. If this job is of significant size, you may find yourself closing your doors.

Three Final Thoughts

- 1) Hire a knowledgeable insurance agent with expertise in construction.
- 2) Have a discussion with the agent about the type of requirements that you are agreeing to in your construction contracts BEFORE you sign the next contract.
- 3) Purchase insurance that matches those requirements as closely as possible.