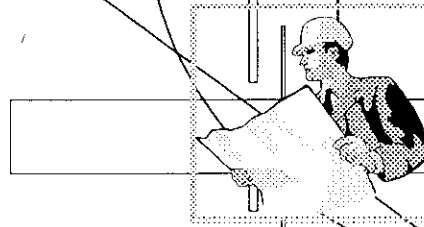


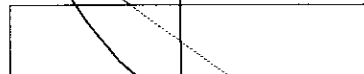
Risk Management and Insurance Requirements in Contracts

SELF and San Diego County and Imperial County Schools



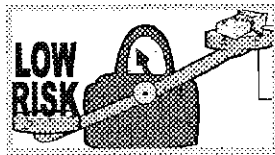
OVERVIEW

- ◆ What is Risk Management?
- ◆ Negligence and Claims Process
- ◆ Insurance Requirements in Contracts



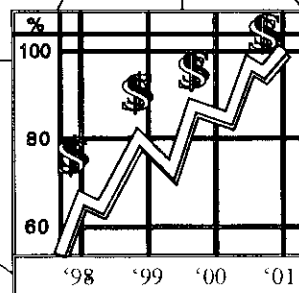
What is Risk Management?

- ◆ Planning, organizing, directing and controlling:
 - ❖ Resources and Activities
- ◆ To Minimize the adverse effects of accidental loss at the LEAST POSSIBLE COST



What is the Cost of Liability Risk?

- ◆ Known Costs
 - ❖ Claims
 - ❖ Adjusting
 - ❖ Litigation
 - ❖ Contractual Indemnity
 - ❖ Insurance
- ◆ Unknown Costs
 - ❖ Employee Time Costs
 - ❖ Hazard Corrections
 - ❖ Cost to Repair School Property



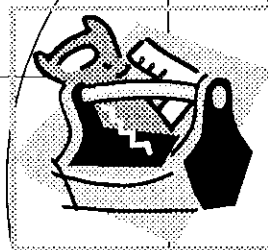
Six Steps in Risk Management

1. Identify Exposures
2. Evaluate Loss Potential
3. Select Method of Risk Control
4. Implement Chosen Techniques
5. Monitor Results
6. Modify Techniques to Reflect Experience



Identification Tools

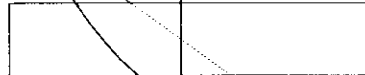
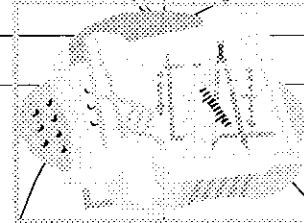
- ◆ Loss Runs
- ◆ Program Brochures
- ◆ Annual Budget
- ◆ School Board Agendas
- ◆ Purchase Agreements
- ◆ Inspection and Maintenance Records
- ◆ Contracts and Leases
- ◆ Complaints and Service Records
- ◆ Property and Equipment Records



Insurance Market
 The insurance market is a market for insurance contracts. It is a market where insurance companies compete for business. The insurance market is a market where insurance companies compete for business. The insurance market is a market where insurance companies compete for business.

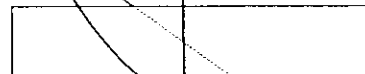
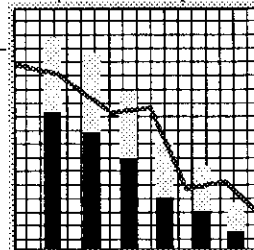
Evaluation Tools

- ◆ Frequency/Severity of Claims
- ◆ Publications/Periodicals/Other Public Agencies
- ◆ Usage Trends
- ◆ Political/Litigation Climate
- ◆ Anticipate



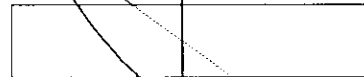
Loss Costs Evaluation

- ◆ Evaluate Experience for a ten year period.
- ◆ REVIEW:
 - ❖ Total Incurred
 - ❖ Total Paid
- ◆ Largest Losses
 - ❖ Total Incurred by Cause and by Department



HIDDEN (AND UNINSURED) COSTS OF ACCIDENTS

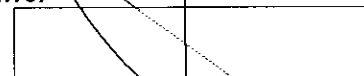
- ◆ Time lost from work by injured
- ◆ Lost time by fellow workers
- ◆ Loss of efficiency due to breakup of crew
- ◆ Lost time of supervision
- ◆ Decreased output of injured worker on return
- ◆ Cost to hire replacement employee
- ◆ Cost of training and/or break-in of new employee



HIDDEN (AND UNINSURED) COSTS OF ACCIDENTS (cont.)

- ◆ Overtime paid to remaining employees
- ◆ Clerical time
- ◆ Building or facility damage
- ◆ Tool and equipment damage
- ◆ Production and/or schedule delays and liquidation damages potential

From International Risk Management Institute, Inc.



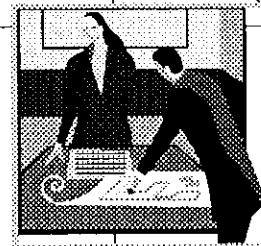
Methods of Controlling Risks

- ◆ Avoidance
- ◆ Transfer Risk
- ◆ Retention of Risk
 - ❖ Reduced Risk through Loss Reduction Efforts
 - ❖ Finance Retained Risk



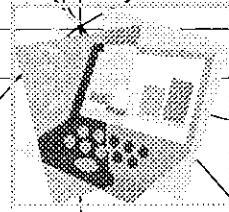
Implementation Considerations

- ◆ Management Support
- ◆ Documentation and Notification
- ◆ Board Approval for Major Actions
- ◆ Follow Consultant Guidelines
- ◆ Develop Procedures



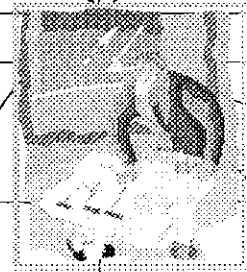
Monitoring Results

- ◆ Define Acceptable Standards and Expectations
- ◆ Compare Actual Results to Anticipated Results
- ◆ Consider Environmental Changes
- ◆ Keep Records/Documents



Modification Guidelines

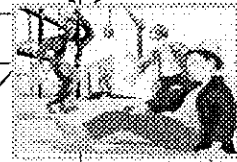
- ◆ Document Decision Making Process
- ◆ Maintain a Safety/Loss Control Program
- ◆ Continue Monitoring Results



Negligence and the Claims Process

Cause of Loss - Negligence Defenses

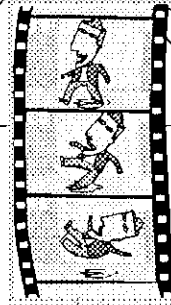
Cause of Loss Negligence



1. A Duty of Obligation Recognizable by law, requiring the person to conform to a certain standard of conduct for the protection of others against unreasonable risks
2. A failure to conform to the standard
3. Connection between the conduct and injury
4. Actual loss or damage from injury

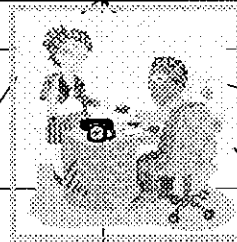
Defenses

1. Comparative Negligence
2. Assumption of Risk
3. Governmental Immunity
4. Informed Consent Agreements
5. Act of God

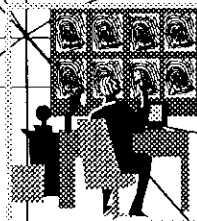


Claims Process

- ◆ **What is a Claims?**
 - ❖ A Demand for Money Damages due to a Complaint Related in any way to anything involving the School District
 - ❖ Sets in Motion Events Mandated by the California Government Code



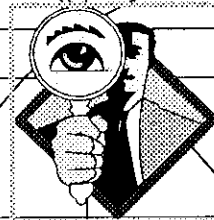
Claims Process



◆ Investigation of a Claim is Based Upon:

- ❖ Facts of Incident
- ❖ Employee, Claimant, Witness Statements
- ❖ Available Immunities through Government Code
- ❖ Percent of Potential Liability
- ❖ Verdict Potential
- ❖ Overall Dollar Exposure to School District

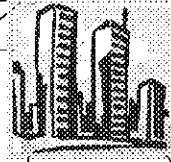
Claims Process



◆ Why We Investigate:

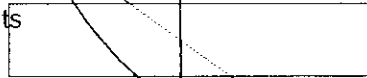
- ❖ Prompt Investigation Allows the District to Decide whether to defend or pay a claim
- ❖ Proper Handling Results in Direct Cost Savings

Claims Process

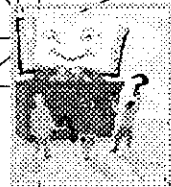


◆ How Can the District Work to Reduce Their Costs?

- ❖ Identifying Potential Claims
 - ❖ Is it a Claim or a Complaint?
- ❖ Quick Response to Incidents
 - ❖ Avoid Frustrating Potential Claimants
 - ❖ Avoid Creating Potential Claimants

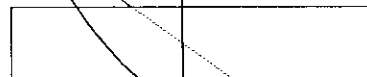


Claims Process



◆ What Can A District Employee Do?

- ❖ Things Happen and Claims Are Expected
- ◆ What Can You Do?
 - ❖ If You Get a Complaint
 - ❖ If You See a Public Hazard
 - ❖ If You Are Involved in an Accident
 - ❖ If You Are Asked for Information Regarding an Incident Involving the District

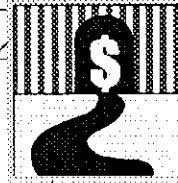


Claims Process

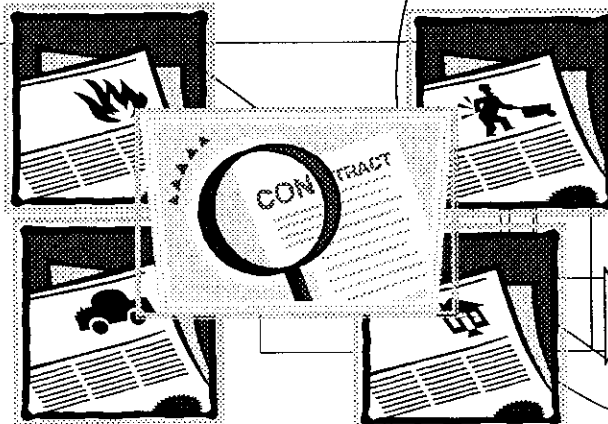
◆ Path of Claims

- ❖ Claims Reported to District
- ❖ Claims Reported to third party administrator
- ❖ Handled by third party administrator with the District and the JPA

- ◆ Potential Excess Claims are Reported to Excess Carrier or SELF, Who Will Become Involved to The Extent They Feel They May Be Liable



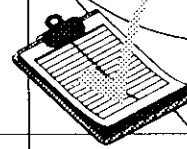
INSURANCE REQUIREMENTS IN CONTRACTS



INSURANCE REQUIREMENTS IN CONTRACTS

◆ AN OVERVIEW

- ✓ Develop Correct Insurance Specifications
- ✓ Require the Proper Hold Harmless Clause
- ✓ Inform Bidders of Requirements Early
- ✓ Distribute Forms Promptly
- ✓ Review the Completed Documentation and Notify Other Party Promptly If Incorrect
- ✓ Save the Signed Forms
- ✓ Inform the Other Party's Insurer Immediately in Writing of Incidents or Claims That Occur



Develop Correct Specifications

◆ EVALUATE THE RISK

- ✓ What Are the Activities?
- ✓ Who Could Be Harmed?
- * ✓ What Is the Maximum Likely Loss?
- ✓ Dangerous Activities, Pollution, Crowds?
- ✓ Would the District Be a Defendant in the Event of Loss?
- ✓ Would You Reject a Bid Not Meeting the Insurance Specifications?



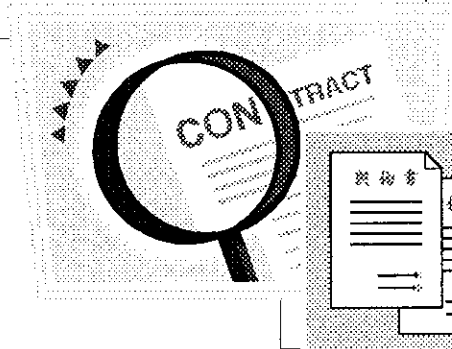
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Additional Insured Endorsements



Additional Insured Endorsements

Page 19-22

- ◆ There Are over Twenty Types of Additional Insured Endorsements
- ◆ Two Common Additional Insured Endorsements

- ❖ CG 20 09 (Form A)
- ❖ CG 20 10 (Form B)

- ◆ There Are Three Versions of Each of These Forms

- ❖ The 1985 version uses the phrase "your work", in the description of what is covered, whereas the 1993 and 1997 versions use the term "your ongoing operations performed", or "any work."

- ◆ Request the Old Forms or That "Your Continuing Work Product" Be Defined to Include Completed Operations

Best

*3/27/15
10/2/15
add*

*pg 75-77
"your work"
"your ongoing operations performed"
"any work"*

INSURER:	
POLICY NUMBER:	
ENDORSEMENT NUMBER: EXHIBIT 1-C	
THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY. ADDITIONAL INSURED - DESIGNATED PERSON OR ORGANIZATION.	
This Endorsement Modifies Insurance Provided Under the Following:	
SCHEDULE: Name of Person or Organizations (If no entry appears above, the information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)	
WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule as an insured but only with respect to liability arising out of your operations or premises owned by or rented to you.	

Modifications to ISO Form CG 20 23 11 85:	
Page 23	
1. "Operation" includes the Named Insured's products.	
2. The insured scheduled above includes the Insured's trustees, officers, employees and volunteers.	
3. This insurance shall be primary as respects the insured shown in the schedule above, or if excess, shall stand in an unbroken chain of coverage excess of the Named Insured's schedule of underlying primary coverage. In the event, any other insurance maintained by the Insured schedule above shall be in excess of this insurance and shall not be called upon to contribute with it.	
4. The insurance afforded by this policy shall not be canceled except after 30 days prior written notice by certified mail return receipt requested has been given to the District.	

VERIFICATION OF COMPLIANCE

Page 16

- ✓ Require acceptable proof of insurance prior to the start of work or occupation
- ✓ If Certificates of Insurance are not accurate, the insurer is not required to conform to the certificate
- ✓ A cancellation notice on a certificate is not binding
- * ✓ Always require endorsements
- * ✓ For major projects, obtain a copy of the complete insurance policy and read it

Have 26 forms
6 Districts & the

LOOKING AT THE CERTIFICATE OF INSURANCE FORM

Page 65 and 66

IMPORTANT

If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

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).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon

COMMON SPECIFICATIONS

Page 29

- ✓ Generally, require a minimum liability limit of \$1,000,000 for both General and Automobile Liability, with a \$2,000,000 aggregate for Liability. Major public work projects require more
- ✓ Liability coverage should be at least as broad as ISO Commercial General Liability occurrence Form CG 0001
- ✓ Automobile coverage should be at least as broad as ISO Business Auto Form CA 0001

COMMON SPECIFICATIONS (cont.)

- ✓ Workers' Compensation as required by the State of California
- ✓ For Employer's Liability, require limits of \$1,000,000
- ✓ Any deductibles and self insured retentions must be declared and approved by the City.

Required Liability Endorsements

- ✓ Added as insureds
- ✓ The other party's coverage shall be primary
- ✓ Thirty-day notice of cancellation
- ✓ Contractors should include all subcontractors as insureds under its policies or furnish certificates and endorsements for all subcontractors

Special Situations

Page 41

- ✓ **Professional Service Contracts** - Ensure General Liability and Professional coverage is sufficient to protect against losses that may result from negligent acts

Require at least \$1,000,000 per claim limits for Errors & Omissions
- ✓ **Environmental Contractors** - Also require Pollution limits of at least \$1,000,000 with at least a \$2,000,000 policy aggregate. Automobile can be endorsed to delete the Pollution exclusion

OTHER CONTRACT REQUIREMENTS

- ◆ **Sample Hold Harmless Agreements - refer to pages 111 and 112**
 - ◆ Example 1 - **Strict Indemnity Language**
 - ◆ Example 2 - **Intermediate Form**
 - ◆ Example 3 - **Limited Form**
 - ◆ Sample - **Release Agreement**

APPENDIX C - PAGE 111

Example 1 - Strict or Type I Indemnity Language

Contractor shall indemnify, defend and hold harmless the District and its trustees, officers, employees and volunteers from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with contractor's performance of work hereunder or its failure to comply with any of its obligations contained in the agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of the District.

In the first example, the contractor promises your District to assume all risk of loss resulting from the project, including losses caused by the joint negligence of your District and the contractor or their subcontractors. **Caution:** While this type of agreement provides the broadest protection for you, It would be subject to challenge under Civil Code Section 2782(b) because it purports to indemnify you for losses for its active negligence. If you have a construction contract (defined in Civil Code Section 2783), Example 2 should be used instead.

APPENDIX C

Example 2 - Intermediate Form

Contractor shall indemnify and hold harmless the District and its trustees, officers, employees and volunteers from and against all claims, damages, losses and expenses including attorney fees arising out of the performance of the work described herein, caused in whole or in part by any negligent act or omission of the contract, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence or willful misconduct of the District.

In the second example, the District receives indemnity if it was not negligent or if its negligence was only passive. (There is a great deal of case law on the active/passive distinction, but essentially active negligence is affirmative participation in causing the harm, or failure to prevent a known danger, whereas passive negligence is failure to detect a danger which the District is under a duty to detect, such as a dangerous condition on its property created by the contractor.) There is a great variety of language used to arrive at this type of intermediate form because any indemnity contract which does not specifically refer to the indemnitee's negligence will be construed as this type of general clause, not providing indemnity for active negligence. So if the contract promises indemnity for losses howsoever may be caused, regardless of responsibility for negligence, arising from use of the premises, facilities or services, or caused by any person or persons whomsoever, the wording will be interpreted as a general indemnity clause.

APPENDIX C

Example 3 - Limited Form

Contractor agrees to protect, indemnify and save harmless the District and its trustees, officers, employees and volunteers from and against all claims, demands and causes of action by contractor's employees or third parties on account of personal injuries or death or on account of property damages arising out of the work to be performed by contractor hereunder and resulting from the negligent act or omissions of contractor, contractor's agents, employees or subcontractors.

This example is the most limited type of indemnity agreement because it only provides indemnity to the extent of the contractor's negligence, or negligence of subcontractors. Under this type of agreement, any negligence on the part of the District, either active or passive, will bar indemnification under the contract, even if the contractor was also negligent. This type of clause is not recommended because it does not provide protection to the District.

NOTE ON HOLD HARMLESS AGREEMENTS

- ◆ IT IS IMPORTANT TO MAKE CERTAIN THAT ATTORNEY FEES AND LITIGATION EXPENSES ARE ASSUMED BY THE CONTRACTOR IN THE INDEMNITY AND HOLD HARMLESS SECTION OF THE CONTRACT. FAILURE TO DO SO WILL RESULT IN THESE EXPENSES NOT BEING COVERED.

Additionally, the new Commercial General Liability form restricts defense costs to only those lawsuits involving issues that are covered perils under the contractor's insurance.

Release Agreement

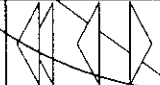
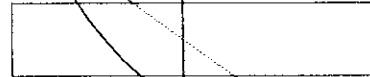
If you have a defined group of persons who might be exposed to harm (for example, participants in an athletic event on your property), a Release Agreement can be prepared. Generally, a Release Agreement must be prominently displayed, no smaller than 10 pt. type. The language cannot be overly complex, nor can it be buried in other verbiage. A standard Release might read as follows:

"In consideration of the acceptance of my application for entry into the above event, I hereby waive, release and discharge any and all claims for damages for death, personal injury or property damage which I may have, or which hereafter accrue to me, against the District as a result of my participation in the event, even though that liability may arise out of the negligence or carelessness on the part of persons or District mentioned above. I further understand that accidents and injuries can arise out of the event; knowing the risks, nevertheless, I hereby agree to assume those risks and to release and to hold harmless all of the persons or agencies mentioned above who (through negligence or carelessness) might otherwise be liable to me (or my heirs or assigns) for damages. It is further understood and agreed that this waiver, release and assumption of risk is to be binding on my heirs and assigns."

The above language was adapted from a clause which cited release language with approval. However, note that the release might still be avoided by a plaintiff if the injury occurs in an unforeseen way, not typical or common to the activity.

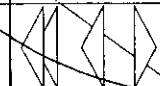
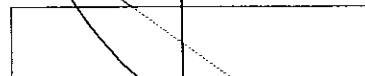
CIVIC CENTER ACT

- ◆ **School facilities are available to groups that wish to conduct recreational activities or to meet and discuss matters of public concern**
- ◆ **The School District may require the user to provide their own insurance and to otherwise guarantee that the District be held harmless. However, . . .**



CIVIC CENTER ACT

- ◆ **Hold Harmless requirements have to be differentiated by those parties being charged for use and those free of charge users.**
- ◆ **Free of Charge Users must show:**
 - ◆ *No other suitable meeting place available; and*
 - ◆ *They are a nonprofit organized to promote youth and/or school activities.*



CIVIC CENTER ACT

- ◆ **Free of Charge Users Hold Harmless exceptions:**

- ◆ *The school is responsible for injuries resulting from:*
 - ◆ Negligence of the District; and
 - ◆ Ownership and maintenance of facilities and grounds.
- ◆ *The user is liable for their negligence during their use of the facility. They can be required to maintain and provide a copy of liability insurance.*

JPA CERTIFICATE ISSUANCE

- ◆ Certificates of Coverage/Additional Covered Party endorsements will be issued by the Program Administrator
- ◆ Information needed:
 - ◆ Copy of Lease or Contract
 - ◆ Complete Information Regarding Certificate Holder (Name, Address, Department, #)
 - ◆ Effective Date and Expiration Date, if temporary
 - ◆ Limits Requested
 - ◆ Location and Description of Operation, Lease, Use, etc.