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A Practical Guide to Insurance and Risk Management

Written by: Albert Sica, Founder and Managing Principal, The ALS Group

In today's complex business landscape, understanding and managing risks is no longer optional. Whether it's negotiating contract terms, purchasing the right insurance policies, or ensuring compliance with trade partner requirements, every decision has a direct impact on your company's financial health and operational resilience.

Risk and the financial impact of risk is something that merits a risk-insurance plan that will identify the various areas the firm is exposed to risk, and the mitigation strategies available to the contractor to reduce the risk they are exposed to. That sounds like a bunch of mumbo jumbo, but it is the core of a good risk management strategy.

Stated simply, think: "What can happen? How bad (financially) can it get? What can I do about it?" Thinking about how to approach your business operations with an eye to reduce or avoid surprises is a prudent balance to managing your business operations.

First, think about risk and financial impact — some risks your firm is exposed to can be mitigated in a few principal ways — through negotiating better contract terms and buying the "right" insurance. This article explores five critical areas where effective risk management can protect and strengthen your business.

1. RISK PROVISIONS IN CONTRACTS: UPSTREAM AND DOWNSTREAM CONSIDERATIONS

Generally, it is challenging for a contractor to negotiate attractive risk terms in contracts with upstream parties. Those parties can be project owners, general contractors (GCs), or others who are dictating terms. The goal is to establish a reasonable standard in risk transfer you accept. Many contractor firms are multigenerational, and to "bet the farm" because you are not aware or willing to push back on overreaching contract terms is not advisable. The way risk is allocated in a contract can significantly impact a company's exposure.

- *Upstream risks (GC to owner)* — When negotiating contracts with an upstream party (a project owner or general contractor), scrutinize indemnity clauses, insurance requirements, and liability caps. These provisions often determine who bears the financial burden if something goes wrong. For example, overly broad indemnity clauses could force your company to take responsibility for issues outside your control. Work with legal and risk management professionals to strike a balance that protects your interests without jeopardizing the deal.

- *Downstream risks (GC to trade partners)* — The same diligence applies to contracts with trade partners. Transfer appropriate risks to trade partners by including clear insurance requirements, waiver of subrogation clauses, and flow-down provisions that mirror your obligations to the owner. Ensure trade partners carry adequate insurance, and verify compliance before work begins.

Having a competent attorney familiar with construction terms and the venue you are dealing with is a must. Work with counsel collaboratively to develop your "standard" upstream contract which would be the preferred format to start with if possible. Another opportunity is to write an effective "downstream" contract you would use with your trade partners. You should try to have a comprehensive risk transfer structure in that contract as well. A few quick tips:

- Having a reasonable indemnity that is tied to insurable risks is ideal.
- Limiting your risk for noninsurable items is certainly a goal.
- Having comprehensive insurance provisions in both upstream and downstream contracts is preferred to avoid misunderstandings on what is "compliant."
- Limit your exposure to "consequential loss." Taking responsibility for loss of earnings or something other than the direct damage that is caused without a cap is a bad idea.

2. BUYING INSURANCE: UNDERSTANDING COVERAGE

Purchasing insurance is more than just checking a box. It's about building a safety net tailored to your business's unique risks. The competition for writing insurance in the contracting space is intense, but the brokers who have the market relationships and technical knowledge are far more limited. Buying proper insurance is your ability to protect your balance sheet and the overall financial health of the company.

Your business is highly dependent on you having proper insurance: You cannot win jobs or satisfy upstream insurance requirements without comprehensive insurance. Finding a reputable insurance broker who is familiar with the operations your firm provides can make all the difference in securing proper insurance.

There are a few key considerations:

Interview brokers to determine their experience and other clients of similar size and scope they write. Get references and speak to the principals of those firms.

- Get details about your broker team. Who is your account executive? Are they involved in your account 365 days a year? You want a good captain who is not going to leave the ship after landing the business.
- What other broker services do you need? Help with contract review? Issuing certificates of insurance within 24 hours or less? Do they have a claims department? Meet the team — they will be your team!
- Which insurers does that broker have direct relationships with? Are they simply going to hand your business to a wholesaler you do not know and who doesn't know you? Understand how that works from the broker.

Let's get comprehensive coverage placed! Below are some steps.

- *Identify key risks* — Work with a knowledgeable broker to conduct a risk assessment. Identify exposures specific to your industry, such as property damage, cyber risks, or professional liability. Associated General Contractors of America (AGC) has a risk management page (agc.org) that can provide useful information to help you structure your exposure survey. The best thing is to think as if you were your insurer — how would the insurer want to understand your business and look for ways you mitigate your company's operational risk?
- *Understand policy language* — Insurance policies are dense and technical, but understanding coverage and exclusions is crucial. For example, does your general liability policy cover contractual liability? Are there exclusions for common risks like water damage or pollution? This is not something you are going to self-study easily, but it's an area where a knowledgeable broker or consultant can assist. When you are presented with proposals, go over the coverage carefully. What is covered? What is not covered? Do you understand the terms being presented? I am a big advocate

of the broker spending time reviewing the proposal and the terms and conditions in detail. Go one by one, and ask about each provision.

- *Assess coverage limits* — Limits of coverage can be driven by exposures you have (property that needs to be insured) or by requirements you have with others. This is an area where good risk management can have a huge effect on how the risks associated with your operations are viewed by the insurance market. Ensure your policy limits align with the potential size of your losses. Inadequate limits could leave your business financially vulnerable. Some standard coverages a contractor would consider include general liability, workers' compensation, automobile, excess liability, contractors professional liability, contractors pollution liability property insurance (building, tools, equipment), loss of income (extra expense), crime coverage, directors and officers liability, and employment practices liability.
- *Negotiate terms* — As stated earlier, you need to understand what you are buying and how the coverage (protecting you) is being negotiated. This coverage transparency can't be emphasized enough. Don't accept the first offer. Work with your broker to negotiate terms that better fit your needs, such as reduced deductibles or expanded coverage endorsements.

3. CLAIMS MANAGEMENT: WHAT IS (REALLY) POSSIBLE?

Filing an insurance claim is often a stressful process, but proper preparation and management can make a significant difference.

- *Documentation is key* — Keep detailed records of incidents, including photos, witness statements, and repair estimates. These will strengthen your case when filing a claim.
- *Understand the process* — Know the steps involved in filing a claim, from notifying your insurer to negotiating a settlement. Familiarize yourself with policy conditions, such as time limits for reporting claims.
- *Be proactive in mitigation* — Demonstrating that you took steps to mitigate losses can improve your claim's credibility. For example, if your property is damaged, arrange temporary repairs to prevent loss.
- *Leverage expert assistance* — Claims adjusters work for the insurer, not you. Consider hiring a public adjuster or working with your broker to ensure your interests are represented.
- *Set realistic expectations* — Not all claims result in full recovery. Understand your policy's limitations and exclusions to avoid surprises.

4. WORKERS' COMPENSATION: MAXIMIZING YOUR INFLUENCE

Workers' compensation premiums are heavily influenced by your experience modification rate (EMR), which compares your company's claims history to industry averages. A lower EMR means lower premiums, so actively managing this metric can save significant money.

- *Prioritize safety* — The most effective way to lower your EMR is to prevent workplace injuries. Invest in robust safety programs, employee training, and regular inspections.
- *Manage claims effectively* — When injuries occur, act quickly to provide medical care and facilitate a return-to-work program. The longer an injured employee is out, the higher the claim costs.
- *Verify claim accuracy* — Errors in your claims history can inflate your EMR. Regularly review your loss runs to ensure all claims are accurately reported and closed promptly.
- *Leverage safety incentives* — Many insurers offer credits or discounts for implementing proactive safety measures. Explore these opportunities to reduce costs.

5. TRADE PARTNER INSURANCE: COMPLIANCE AND CERTIFICATES

Trade partner compliance is a critical component of risk management. Failure to ensure proper insurance coverage can expose your business to significant liabilities.

- *Establish requirements* — Clearly specify insurance requirements in your trade partner agreements. Typical requirements include general liability, workers' compensation, and automobile liability coverage with minimum limits.
- *Verify certificates of insurance (COIs)* — Don't take COIs at face value. Verify their authenticity and confirm that coverage meets your contractual requirements. Pay attention to policy expiration dates, and ensure renewals are received.
- *Track compliance* — Use software or third-party services to track trade partner insurance compliance. Automated systems can flag expired or noncompliant policies, saving time and reducing risk.

» *Audit coverage* — Periodically audit trade partner insurance policies to ensure they provide the coverage specified in the COI. For example, a trade partner's general liability policy should not exclude key exposures like roofing or excavation if those are part of the project.

Effective risk management is about more than mitigating potential losses — it's about positioning your business for long-term success. By addressing risk provisions in contracts, purchasing the right insurance, managing claims effectively, influencing your workers' compensation EMR, and ensuring trade partner compliance, you can create a comprehensive strategy that safeguards your business.

Invest the time to understand these principles and partner with experienced professionals to implement them. The result will be a more resilient, competitive, and profitable business.

About the Author

Albert Sica, founder and managing principal of The ALS Group, brings over 30 years of expertise in risk management with a focus on real estate and development. Sica partners with executive leaders to drive effective risk management strategies aligned with their strategic goals.

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