

Contractual Risk Transfer: A Critical but Often Overlooked Risk Management Tool

Contractual risk transfer (CRT) is an essential risk management practice that companies often overlook—resulting in unnecessary loss retention. The following two case studies illustrate how actual claims played out, one without CRT and one with CRT in place.

CONTACT

To learn more about how Amwins can help you place coverage for your clients, reach out to your local Amwins broker.

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Case Study 1: No CRT = catastrophic loss

A recycler leased employees from a third party to torch-cut material. While torch-cutting brass rings off government-certified demilitarized munitions, an explosion occurred. One of the leased workers was gravely injured and died days later; the decedent's estate filed a wrongful death suit.

The resulting claims investigation revealed no contract existed between the recycling company and the staffing agency. The recycler had to defend the claim, and its insurer ultimately settled the case for millions – negatively impacting the company's insurance rates, terms and conditions for years to come.

Case Study 2: CRT = risk effectively managed

A recycling company hired an independent truck owner/operator to transport scrap and leased a trailer to the trucker. While in route to pick up a load for the recycler, the trucker made an illegal U-turn and collided with an oncoming car, killing the driver.

The driver's estate sued the recycling company on the basis of vicarious liability, as the trucker was hauling the company's trailer. However, the recycler had a contract with the trucker that included a strong indemnification agreement as well as a clause making the recycling company an additional insured on the trucker's auto policy.

The trucker's insurer provided both defense and indemnification for the recycling company. And, as a result, the company's own insurance was not materially affected.

Vicarious liability and the three fundamentals of sound CRT practices

In any owner/contractor, employer/employee or principal/agent relationship, the principal can be held vicariously liable for the negligent actions or inactions of the agent. Proactive contractual risk management practices can transfer these exposures and prevent significant losses. These three approaches are fundamental to sound CRT practices.



Hold-Harmless or Indemnification Agreements

These agreements shift liability from one party to another in the event of a loss or claim.

- A *hold-harmless agreement* absolves another party from responsibility for damage or other liability arising from the work performed.
- An *indemnification agreement* reimburses another party for a loss due to a third party's or one's own act or default. Such agreements should include: a duty to indemnify and a duty to provide defense following a loss or claim. However, it's important to remember that some state statutes limit the use of indemnification agreements, so be sure to consult legal counsel when drafting contract language.



Additional-Insured Status

There are two common approaches to help ensure the counterparty can fulfill its contractual obligations from a financial perspective:

- Name your company an additional insured on the other party's insurance policies. This can force the other party's policy to respond directly on your behalf for defense and indemnification—within the limits, terms, and conditions of the coverage.
 - Include general liability for both ongoing and completed operations, automobile and umbrella policies
 - Secure additional insured status by specific (rather than blanket) endorsement
- Establish a written contract between your company and the contractor
 - In most cases, the contractor's general liability policy will cover liability assumed in an "insured contract." However, it's important to verify that the indemnitor has sufficient policy limits.



Waiver of Subrogation

Request a waiver of subrogation in your favor on the contractor's workers' compensation, general liability, auto and umbrella policies.

- If a contractor's employee is injured while working on your behalf, the waiver of subrogation will prevent the contractor's workers' comp carrier from seeking recovery from your company.

In addition to taking the above steps you may also want to require contractors to provide certificates of insurance and declarations pages of their policies.

We help you win

Circumstances, agreements and state laws vary. Therefore, you should always consult your legal counsel, insurance broker, risk manager or insurance carrier when implementing a CRT plan. Amwins is here to help. Contact your local underwriter today.

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