

# What to look for in subcontractor warranty endorsements

General liability policies increasingly include clauses with serious implications for builders

**WITH INCREASING** frequency in the construction defect cases we defend, we are seeing commercial general liability insurance policies with “subcontractor warranty” endorsements. Also known as contractor or subcontractor special conditions, these endorsements could have severe and negative consequences for builders that do not comply with their requirements. In researching for this article, I reviewed six different endorsements used by six different carriers, all of which contained some or all of the following requirements:

- The builder must have signed subcontract agreements with its subcontractors that require subcontractors to hold harmless, i.e., defend and indemnify, the builder for “bodily injury” or “property damage” claims caused by their negligence.
- The subcontractors must maintain their own insurance with limits equal to or greater than the limits in the builder’s own policy, with limits of at least \$1 million per occurrence.
- The subcontractors’ insurance must not exclude the work being performed for the builder: e.g., the excavator’s policy cannot exclude earth movement claims, the subcontractor’s policy cannot exclude residential construction.
- The subcontractors must maintain their own workers’ compensation or employer’s liability insurance.
- The subcontractors must provide the builder with an endorsement or a certificate of insurance indicating that the builder has been added to the subcontractors’ insurance as an additional insured.
- The subcontractors must provide the builder with an endorsement or a certificate of insurance indicating that their insurance carriers have agreed



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to provide waivers of subrogation in favor of the builder.

- The builder must maintain records evidencing compliance with these requirements through the applicable statute of repose.
- The builder must obtain proof that the subcontractors have all licenses as required by local or state statute, regulation or ordinance, and that such licenses are up to date.

Failure to comply with one or more of these requirements can have disastrous implications for the builder. Depending on the wording of the actual endorsement, these consequences could include complete nullification of coverage relative to a loss caused by the subcontractors’ work, the imposition of a higher deductible or retained limit being applied to a loss caused by subcontractors, a lower limit of liability

being applied to a loss caused by subcontractors, or the carrier increasing the premium for insurance after an audit of the records provided by the builder.

While the severity of the consequences may be lessened for builders using wrap insurance programs for their projects, this should be of serious concern for builders insuring themselves through annual renewable insurance programs. My recommendation is for builders to work with their insurance agents or brokers to determine if it is possible to obtain insurance without the subcontractor warranty endorsement. If not, it is imperative that builders understand the requirements of the subcontractor warranty endorsements and that they comply with those requirements. This absolutely is a situation in which an ounce of prevention is worth a pound of cure, assuming that any cure is even possible. ○



Please feel free to reach out to me at (303) 987-9813 or by email at [mclain@hhmlaw.com](mailto:mclain@hhmlaw.com) if you would like to explore revamping your building practices in order to make yourself a hardened target.