Joint Venture Liability Coverage: A Business Issue to Carefully Consider

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Professional liability policies for architects, engineers and environmental consultants usually provide joint venture coverage for professional services that are performed on behalf of their clients. But most forget to check their other coverages to see how they respond to the very important issue of joint venture liability.

More importantly, on many occasions the approach that is used is a "silent joint venture," As such, there is nothing filed with the state authorities or anyone else regarding this new entity, It is simply a signed document which can come back to haunt those who use this approach, if they do not address this issue properly.

This topic has always created a dilemma for those who use this approach and their insurance agents. The reason is that when you look at the vast majority of commercial general liability policies and the section entitled "Who is an Insured," there is a very specific exclusion that relates to joint ventures, partnerships or limited liability companies.

In view of this, it would seem to be prudent to review policies pertaining to any joint ventures you were involved in, or are involved in at the present time. If you have plans to use this approach in the future, make sure that you call obtain the needed liability coverage well in advance of the actual operations.

Joint ventures will be a more attractive alternative in the future, particularly when dealing with a design/build delivery system. As a result, you may want to consider this approach with circumspection, as it does have some serious potential problems if not handled properly.

Many people believe they can take care of the joint venture operations on their existing liability policies, If this approach is approved by your carrier, only one party's interest will be covered and the other joint venture partners' interest would not. Hence, the other joint venture partners would have to do the same thing on their policies if possible. Would you want to have to pay higher premiums for losses on your insurance program long after the joint venture is over?

A better approach would be to have a separate set of policies issued for the joint venture entity itself. Once the joint venture is over, you can deal with it through your joint venture agreement; i.e., each party covers their interest in the dissolved joint venture; or else the joint venture can purchase discontinued completed operations to cover the past operations of the dissolved joint venture entity.

Another problem is that you cannot add the joint ventures to your Worker's Compensation policy unless one partner owns 50.1% of the joint venture because of the combinability requirements of the NCCI Worker's Compensation rules. If you could, you might not want to have the joint venture losses on your ongoing Worker's Compensation Insurance program. As a result, the best approach again would he to utilize a separate joint venture insurance program for all required coverages.

You also have the same issues and exposures in the umbrella policy area, so you will have to address this issue with your umbrella carrier to prevent gaps in coverage.

If you do nothing and your insurance program does not have a joint venture exclusion, remember liability policies only respond to claims arising from entities that are named insureds on the policy. So even if you feel the joint venture is covered, beware if the joint venture is not a "named insured" on your policies, as you will have problems in the event of claims arising from the joint venture.

I suggest that you give the joint venture topic serious consideration and take the necessary Steps to correct and prevent problems from any past, present or future joint ventures.

Another area to be considered is involvement in wrap-ups or Owner Control led Insurance Programs. If you were involved in a wrap-up or an OCIP project, how did you cover the liability insurance exposure once the wrap-up or OCIP coverages ceased? Did you cover them through your existing insurance program while you were working on the wrap-up project? Probably not; as you most likely excluded these operations from your Insurance program, because you were required to be covered by the wrap-up/ OCIP program and not charge the owner for your Insurance costs. Therefore, this is not a cut and dry issue, but one that must be addressed for each and every wrap-up/OCIP program that you are or were involved in.

None of these issues are insoluble, but they do require specific actions because there is no automatic coverage for operations arising out of joint ventures or wrap-up/OCIPS.

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NOTE: This article is intended for general discussion of the subject, and should not be mistaken for legal advice. Readers are cautioned to consult appropriate advisors for advice applicable to their individual circumstances.