

Changes to ADM.21 Insurance and Indemnity Requirements for Contracts

By Robin Aronson

On the best seller list for WCIA is ADM.21 in the Liability Resource Manual. This is a comprehensive guide for members to use for guidance on insurance limits and requirements for various types of contracts.

From time to time, we make a few changes to keep up with what's going on with risk exposures. Thank you to the members who might tip us off to needed changes based upon their experience in negotiating agreements.

WCIA has made three changes to the guidance in ADM.21; the updated manual is located on the WCIA website in the Administration section of the [Liability Resource Manual](#).

First, earlier this year we made the following change to our recommendation for Builders Risk deductibles:

We changed the recommended deductible for Builders Risk from \$5,000 to \$25,000 as our Broker and members have advised us that \$25,000 is more the norm these days and easier for contractor's to purchase a policy with a deductible of this amount. You can still require a lower deductible; the change here was to be more in keeping with the typical Builders Risk insurance policy.

Second, we updated the Subrogation provisions to eliminate the waiver being mutual.

A subrogation waiver is most often found in construction and lease agreements and applies to claims covered by property insurance. As an example, WCIA might pay up front to a member on a first party property claim and then "subrogate" (go back and seek reimbursement) against an at fault contractor's insurance carrier where the member had a contractual agreement with the contractor on a project. We have experienced insurance carriers on a few claims using (or perhaps, misusing) the mutual subrogation waiver to argue they did not need to reimburse WCIA under its CGL policy for the negligence of their insured contractor.

Third, we have added language to require Tenant Discrimination Insurance for Professional Service Agreements with housing/shelter vendors. This appears to be somewhat of a new type of coverage. From our research it looks like CGL and Business Owner's policies would not cover this type of claim.

This would come into play where a member contracts with an entity to operate a homeless shelter on City property. We recently saw a claim where a tenant alleged discrimination against a member City, and a housing vendor whom the member contracted with to operate a tiny home village. WCIA tendered the claim to the vendor's CGL insurance company which in turn then defended the claim under a reservation of rights contending that tenant discrimination was not covered under the CGL. The housing vendor also had a Tenant Discrimination Policy of Insurance but the City was not an additional insured as the member didn't ask for the coverage in their contract with the vendor. (Who knew there was such a coverage; now we know!)

For assistance in locating ADM.21 or in reviewing the insurance language in agreements, please reach out to your assigned risk management representative. We are happy to assist!