

The background is a vibrant, multi-colored fractal pattern. On the left, a stylized, textured figure is shown from the back, blowing a large, multi-colored balloon that expands towards the right. The colors transition from blue and purple on the left to yellow, orange, and red on the right, with green and cyan accents. The overall effect is surreal and psychedelic.

*Mind Blowing Mysteries of
Contractual Risk Transfer*

KEEP RISK WEIRD



RISK



Hipster



Austin Hipster



RISK APPETITE DIFFERS BETWEEN ORGANIZATIONS, PROJECTS, & STAKEHOLDERS



KNOW WHAT YOU WANT BEFORE YOU ENTER AGREEMENT!



Once you start asking questions, innocence is gone.

Are you asking the right questions?

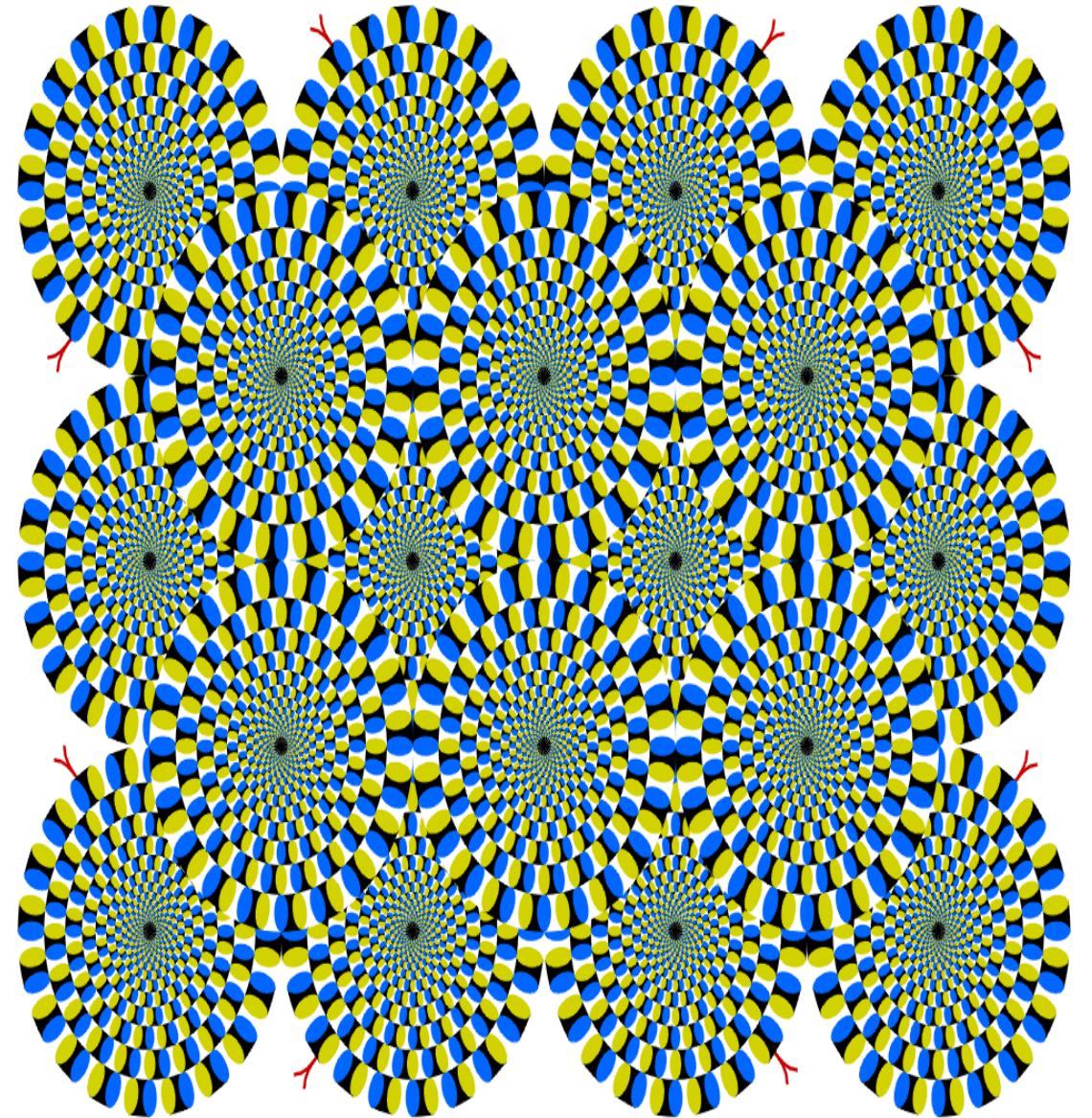
- Risk Transfer & Identification

Are you using the right language?

- Contract & Insurance Specifications

Are you getting what you want?

- Compliance & claim response



KEEP RISK WEIRD

“If I had a world of my own,
everything would be
nonsense. Nothing would
be what it is, because
everything would be what it
isn't. And contrary wise,
what is, it wouldn't be. And
what it wouldn't be, it
would. You see?” *Lewis
Carroll-Alice in Wonderland*

RISK TRANSFER

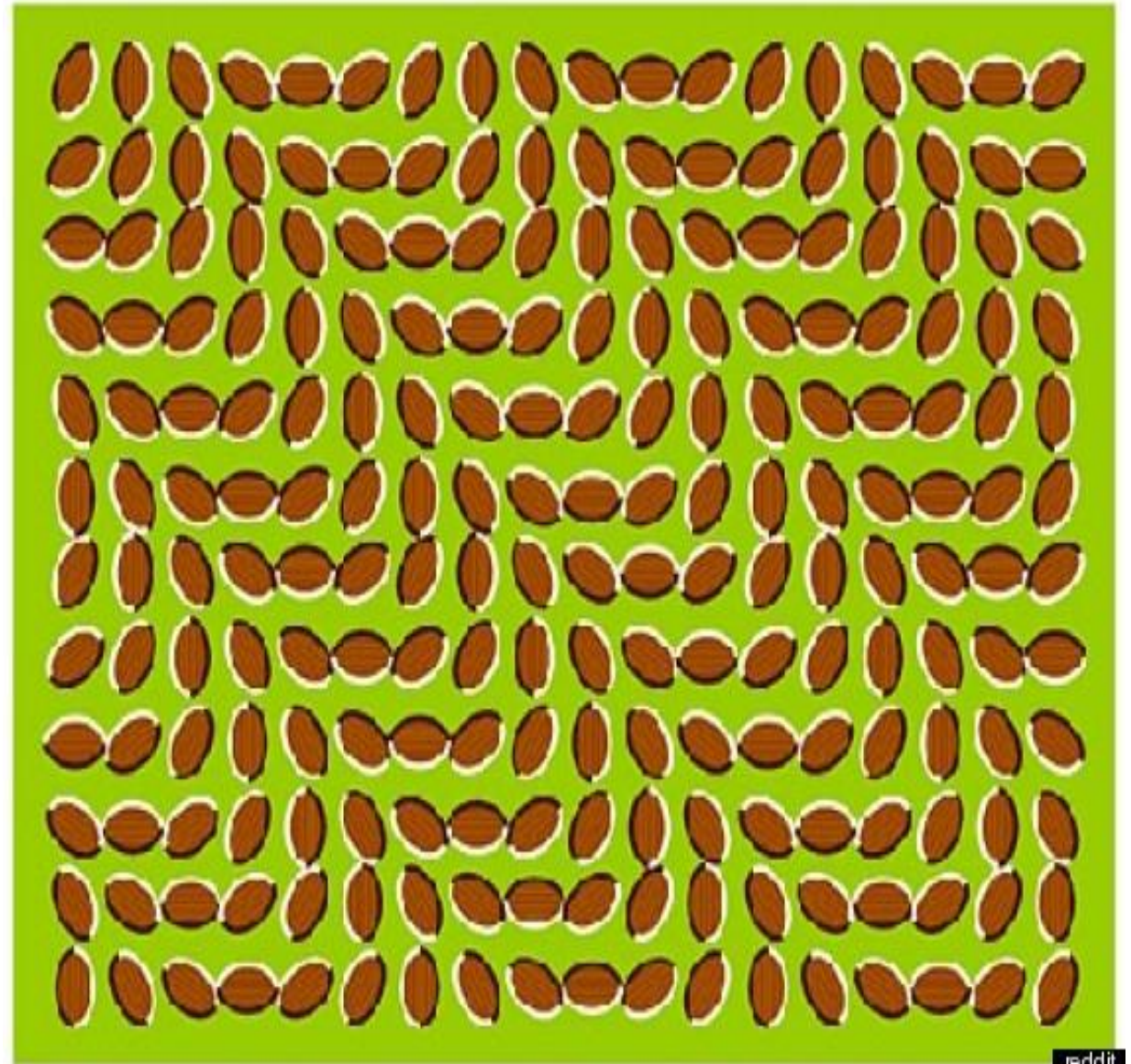


CONTRACT

KEEP RISK WEIRD

Risk Transfer – What Is It?

- Assigning responsibility for loss and related damages to the contracting party who controls the circumstances that might lead to the loss
- Hold harmless or indemnification clause
- Does NOT absolve you of liability
- Promise of payment in event of a loss
- Only as good as the person making the promise

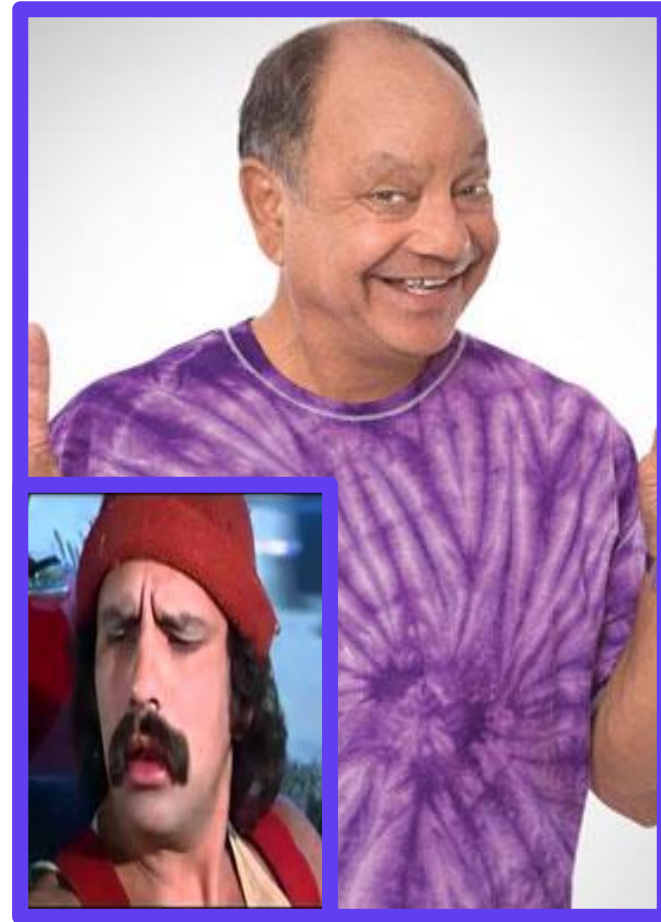


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KEEP RISK WEIRD

Contractual Risk Transfer:

The use of contractual obligations such as indemnity and exculpatory agreements (hold harmless), waivers of recovery rights, and insurance requirements to pass along to others what would otherwise be one's own risks of loss. **Contracts, Policies, and Endorsements contain “phrases and words” that provide the promise of risk transfer.**



The reason we're so dangerous is because we're totally harmless. Cheech Marin



Risk Transfer – When To Do It?

Any time you have, or should have, a written agreement with someone

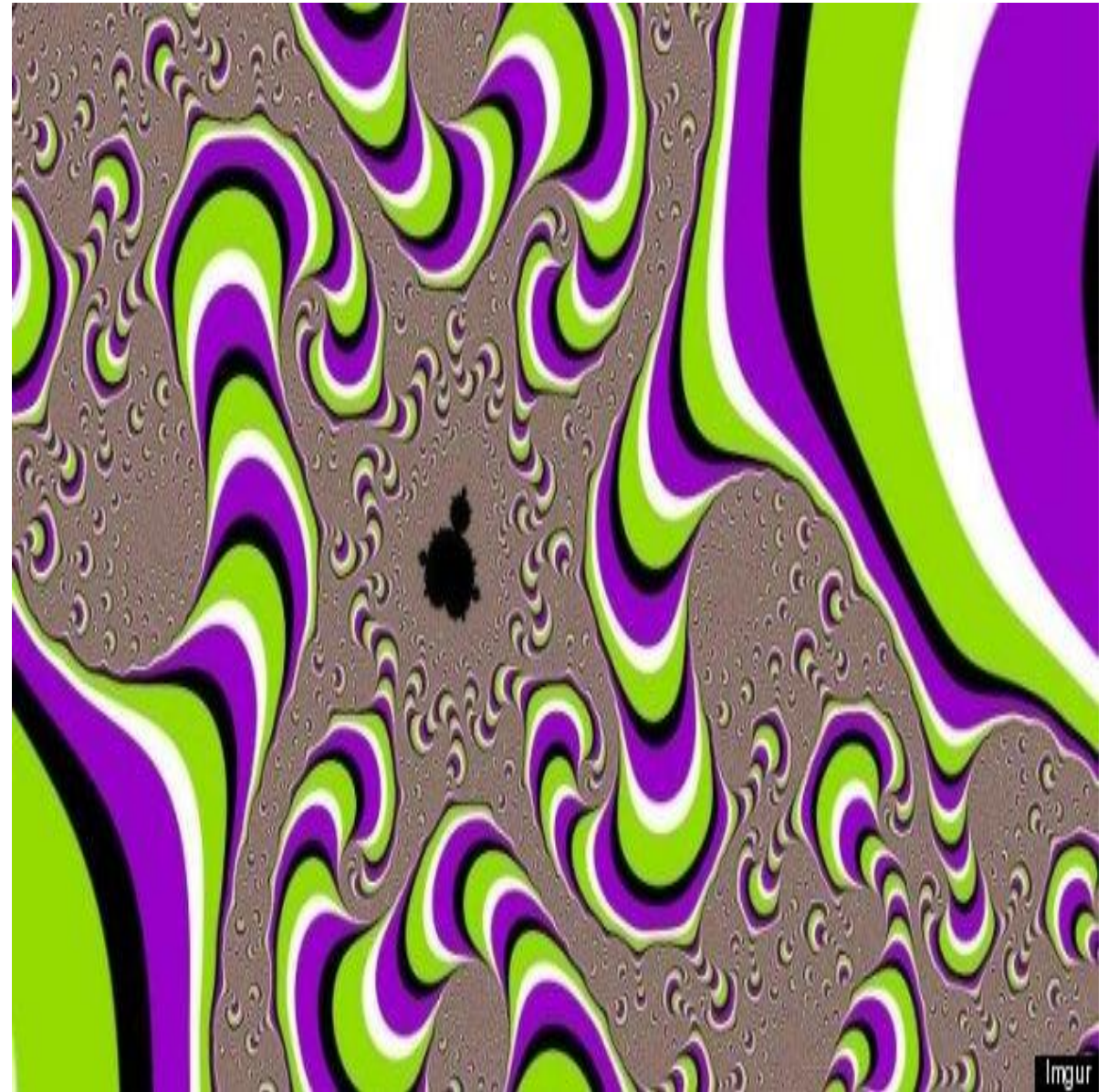
- Construction Projects
- Professional Services
- Outsourced Functions
- Property Leases
- Special Events
- Recreational Activities



KEEP RISK WEIRD

Risk Transfer – Why Require Insurance?

- “Hold Harmless & Indemnify” is a promise to not hold you liable as well as cover any damages (injury, property loss) caused by the other contracting party
- Viability of contractor
- Want coverage under the policy
 - Additional insured status
 - Separate contract providing protection



KEEP RISK WEIRD

Which Card is protected? How do you know?



From "Indemnification" to "Additional Insured", and ultimately, covered loss is a "Long Strange Trip"

"Would you tell me, please, which way I ought to go from here?"

'That depends a good deal on where you want to get to,' said the Cat.

'I don't much care where -' said Alice.

'Then it doesn't matter which way you go,' said the Cat.

'- so long as I get SOMEWHERE,' Alice added as an explanation.

'Oh, you're sure to do that,' said the Cat, 'if you only walk long enough.'

— **Lewis Carroll, Alice in Wonderland**



Statements of Obvious Truth

(Weirdness):

IT'S ONLY REASONABLE TO ASSUME:

- Contracts are authored with the intention of certain results and effectiveness.
- Contractual requirements are expected to be met by the party agreeing to meet the requirements.
- Contracts should not be signed without a thorough reading and understanding of the obligations to which the parties agree.



KEEP RISK WEIRD

Statements of Obvious Truth

(Weirdness):

IT'S ONLY REASONABLE TO ASSUME:

- Compliance should not be assumed and verification left until an event to which the contract applies triggers its interpretation.
- If what you intend to say is different from what you say, then you should say what you intend.
- Not all Additional Insured endorsements are created equal.



KEEP RISK WEIRD

Contract Challenges:

- Enforcing agreements with ambiguous language
- Connecting indemnity obligations with specific insurance clause obligations
- Achieving compliance for *subtle* requirements when the vendor does not understand the requirements and/or has not communicated them to his agent, broker, OR CARRIER.



KEEP RISK WEIRD

Additional Insured: Why, and why so important?

- C-E-O (Contracting Entity Only)
- Ongoing and Products/Completed Operations
- “...caused in whole or in part By...”
- Sole Negligence
- Relationships to contractual requirements



Do you really know what you are getting in a contract? *“If you drink much from a bottle marked 'poison' it is certain to disagree with you sooner or later.”*

KEEP RISK WEIRD

What does the coverage say?

COMMERCIAL GENERAL LIABILITY
FORM 33-0861

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – PRIMARY & NON-CONTRIBUTORY COVERAGE – AUTOMATIC STATUS WHEN REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. Section II – Who Is An Insured is amended to include as an additional insured any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or

2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for that additional insured are completed.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

b. Supervisory, inspection, architectural or engineering activities.

2. "Bodily injury" or "property damage" occurring after:

a. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

b. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

C. With respect to the insurance afforded the additional insured, paragraph 4. of SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS is replaced by the following:

4. Other Insurance

a. This insurance is primary and noncontributory, as respects any other insurance. The additional insured must notify us as soon as practicable of a claim or an "occurrence" which may result in a claim.

b. This provision applies only to these additional insureds and the coverage provided by this endorsement.



Is there any language that you might disagree with?

Ongoing & Completed Operations

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 10 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

- Your acts or omissions; or
- The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

- The insurance afforded to such additional insured only applies to the extent permitted by law; and
- If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

- All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
- That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.



Done

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 10 01 01

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:

If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

A. Section II – Who Is An Insured is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of your ongoing operations performed for that insured.

B. With respect to the insurance afforded to these additional insureds, the following exclusion is added:

2. Exclusions

This insurance does not apply to "bodily injury" or "property damage" occurring after:

(1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the site of the covered operations has been completed; or

(2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.



Certificate of Insurance – Are You Getting What You Want?

ACORD **CERTIFICATE OF LIABILITY INSURANCE** DATE 08/04/2010

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME: _____ PHONE: _____ FAX: _____ ADDRESS: _____ E-MAIL: _____
INSURED	INSURER A: Hartford Casualty Insurance Company NAIC # 29424 INSURER B: Hartford Ins Co of the Midwest 37478 INSURER C: Travelers Casualty and Surety Company 19038 INSURER D: _____ INSURER E: _____ INSURER F: _____

COVERAGES **CERTIFICATE NUMBER: 952903258** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

TYPE OF INSURANCE	CLASS	PERIOD	POLICY NUMBER	INSURER	REVISION	LIMITS
A COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIM MADE <input checked="" type="checkbox"/> OCCUR		Y	8000018	8000017		EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES \$1,000,000 MED EXP (per person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 CENTRAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000
	GEN'L AGGREGATE LIMIT APPLIED FOR: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> OCC <input type="checkbox"/> LOC <input type="checkbox"/> OTHER					
A AUTOMOBILE LIABILITY	<input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTO <input checked="" type="checkbox"/> HIRED AUTO	Y	8000016	8000017		COMBINED SINGLE LIMIT \$1,000,000 BODILY INJURY (per person) \$ BODILY INJURY (per accident) \$ PROPERTY DAMAGE (per accident) \$
	<input type="checkbox"/> SCHEDULED AUTO <input checked="" type="checkbox"/> SCHEDULED AUTO	Y				
A UMBRELLA LIAB EXCESS LIAB	<input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIM MADE	Y	8000018	8000017		EACH OCCURRENCE \$2,000,000 AGGREGATE \$2,000,000
	<input checked="" type="checkbox"/> RETENTION \$10,000					
B WORKERS COMPENSATION AND EMPLOYERS LIABILITY ANY PROPRIETORSHIP/NEWSCAREATIVE OFFICERS/SHARES EXCLUDED (Mandatory in NY)	T/A	Y	8000016	8000017		<input checked="" type="checkbox"/> PER POLICY <input type="checkbox"/> PER EMPLOYEE <input type="checkbox"/> PER POLICY LIMIT
	S/A					E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
C Professional Liability Crime Made			8000016	8000017		Per Claim \$2,000,000 Aggregate \$2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

As required by written contract or written agreement, the following provisions apply subject to the policy terms, conditions, limitations and exclusions: The Certificate Holder and owner are included as Automatic Additional Insured's for ongoing and completed operations under General Liability;

CERTIFICATE HOLDER	CANCELLATION
	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE: _____



INSPECT WHAT YOU EXPECT

Third Party Over Actions (“Action Over” claims):

- Purpose – Allocation of Risk
- Practicality – relatively misunderstood concept
- Hesitation – indemnity of sole-negligence



Insured Contract definition:

- Standard language (part f. of Definition of “Insured Contract”)
- New language with significantly limited scope
- Application of insurance coverage limits



Contrariwise, if it was so, it might be; and if it were so, it would be; but as it isn't, it ain't.
That's contract logic!



When Notice of Claim or Loss Occurs
Making the most of a “Bad Trip”

- Make sure known loss is documented and immediately reported to all stakeholders
- Always refer to contract language and intent
- Seek clarification on basis for dispute(s) about claim ownership and mitigation efforts
- Time is money...resolve as quickly as possible
- Communicate, Communicate, Communicate till resolved



The art of asking questions is the source of all knowledge.

Are you asking the right questions?

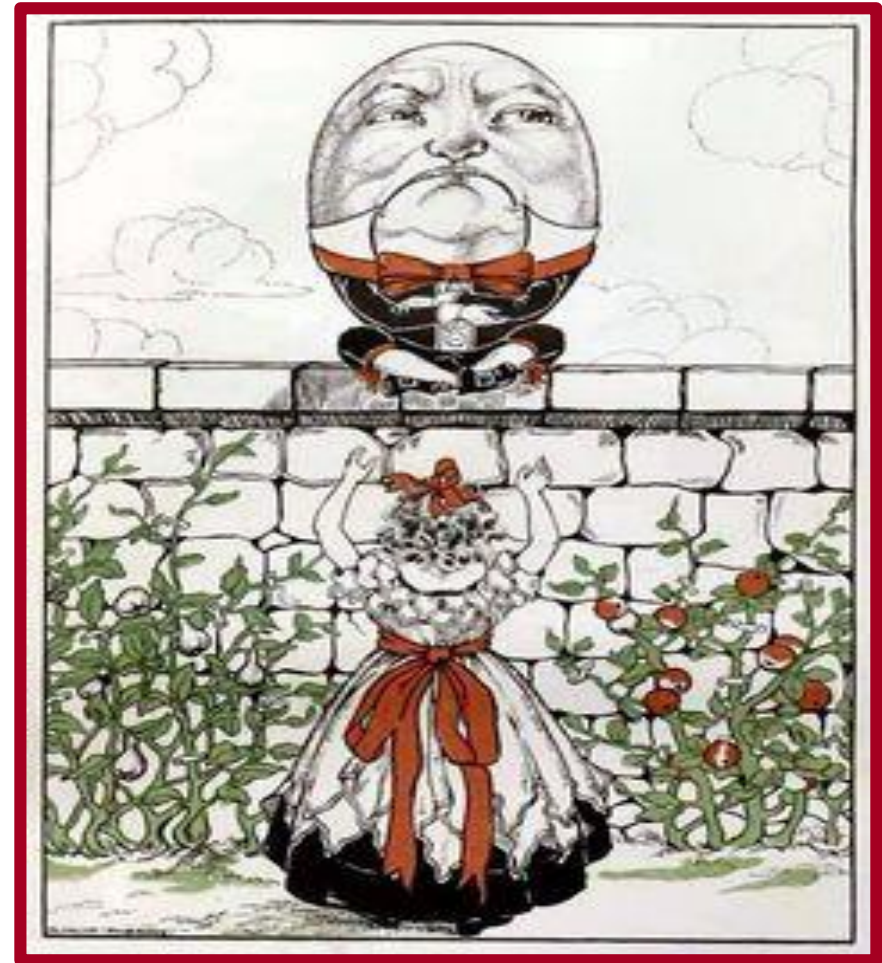
- Risk Transfer & Identification

Are you using the right language?

- Contract & Insurance Specifications

Are you getting what you want?

- Compliance & claim response



“When I use a word,” Humpty Dumpty said in rather a scornful tone, “it means just what I choose it to mean — neither more nor less.” “The question is,” said Alice, “whether you can make words mean so many different things.” “The question is,” said Humpty Dumpty, “which is to be master — — that’s all.”

WHAT STARTS HERE...



...IS FORGOTTEN TOMORROW!

KEEP RISK WEIRD

THANKS!

FOR YOUR TIME & ATTENTION



MESQUITE
T E X A S

cgillenw@cityofmesquite.com



Visit us at Booth

52

icaprogram.com



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