

**2016-17 Board of Directors**

**President**

Bill Rush  
 City of Thornton  
 (303) 538-7306  
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**Legislative Chair**

Thellene Crawford  
 Douglas County Schools  
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[Tj.crawford@dcsdk12.org](mailto:Tj.crawford@dcsdk12.org)

**Vice President, Meetings**

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**Secretary**

Cathy Lutzkanin  
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**Membership**

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**Treasurer**

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**Professional Member**

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<b>CSIA</b> <i>Meeting Notice &amp; Agenda</i>	
<b>Date &amp; Time</b>	<b>Tuesday, October 11, 2016 11:30 a.m. – 1:30 p.m.</b>
<b>Location</b>	<b>City of Lakewood, Human Resources Training Room 480 S. Allison Pkwy., 2<sup>nd</sup> Floor</b>
<b>Program</b>	<b><i>Contracting Best Practices – Priscilla McCoy</i></b>
<b>Sponsors</b>	<b>Franco Signor</b>

**Business Meeting – Bill Rush, CSIA President**

- Call to Order
- Introduction of Sponsors
- Introduction of CSIA Board & meeting attendees

**Approval of minutes of the previous meeting**

**Treasurer’s Report**

***Victoria McColm, Treasurer***

**Membership Report**

***Debby Esler, Membership Chair***

**Just when you think you’ve heard it all.....**

**Old Business --**

**New Business –**

**Legislative Update – TJ Crawford, *Legislative Chair* & Danny Tomlinson, *CSIA Lobbyist***

**Case Law Update – Paul Feld, *CSIA Professional Member***

**Meeting Adjournment**

<b>Next CSIA Meeting</b>	
<b>Date &amp; Time</b>	<b>Tuesday, November 8, 2016 – 11:30 a.m. – 1:30 p.m.</b>
<b>Program</b>	<b>Trending Medical Issues; PTSD – Bart Goldman, MD &amp; Stephen Moe, MD</b>
<b>Location</b>	<b>City of Lakewood, Human Resources Training Room 480 S. Allison Pkwy., 2<sup>nd</sup> Floor</b>
<b>Sponsor</b>	<b>Workwell Occupational Medicine</b>

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**October 2016 Message from the President, Bill Rush**

Happy Halloween (a little early) to you! A little history on this holiday: Halloween is the evening before the Christian holy day of All Hallows' Day (also known as All Saints' Day) on November 1 thus giving the holiday on October 31 the full name of All Hallows' Eve (meaning the evening before All Hallows' Day). All Saints' Day is a festival celebrated by the Roman Catholic Church (and some other Western Christian traditions), is in honor of all the saints (known and unknown), and commemorates the departed faithful who have not yet been purified and reached heaven. I don't know all about that. I just remember running around in small town Nebraska with my Superman costume, my dog Gus, grabbing candy, and then watching It's the Great Pumpkin, Charlie Brown. Aw...traditions! 😊



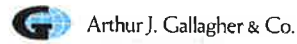
I hope you are in favor of our recent changes: the time of our monthly meetings to 11:30 – 1:30, lunches instead of snacks (**thank you sponsors!!**), and our meeting location always at the City of Lakewood (**thank you Dee and Seerie!**). We are excited about these changes and appreciate your feedback!

We are working on expanding our membership in CSIA to those large entities with large self-insured deductibles that may not necessarily be a qualified self-insurer in the state of Colorado. We believe their interests would align with ours so there should be interest. We will keep you posted!

At the October meeting, we will have a list of those entities that have not yet paid their annual dues. Unfortunately, if not paid by November, those entities will be dropped from our active list of membership and their representatives will no longer receive our monthly invitations. Please check out this list and be sure to make your payment (if not already done so) by November! **Thank you thank you thank you!**

Next up is Contracting Best Practices including the importance of contractual transfer of risk to third party vendors, additional insured endorsements, indemnification clauses, and waivers of subrogation by Priscilla McCoy on Tuesday, October 11 at 11:30 with Franco Signor as our sponsor.

I am looking forward to seeing you! - Your Prez Bill Rush



## COLORADO SELF INSURERS ASSOCIATION

**Insurance Discussion for Third Party Contacts**  
(including Contract Considerations, Use of Insurance Clauses,  
Additional Insured items, Waiver of Subrogation, and ACORD  
Certificate of Insurance)

OCTOBER 11, 2016

Presented by:  
Priscilla A. McCoy  
Area Sr. Vice President

### Overview

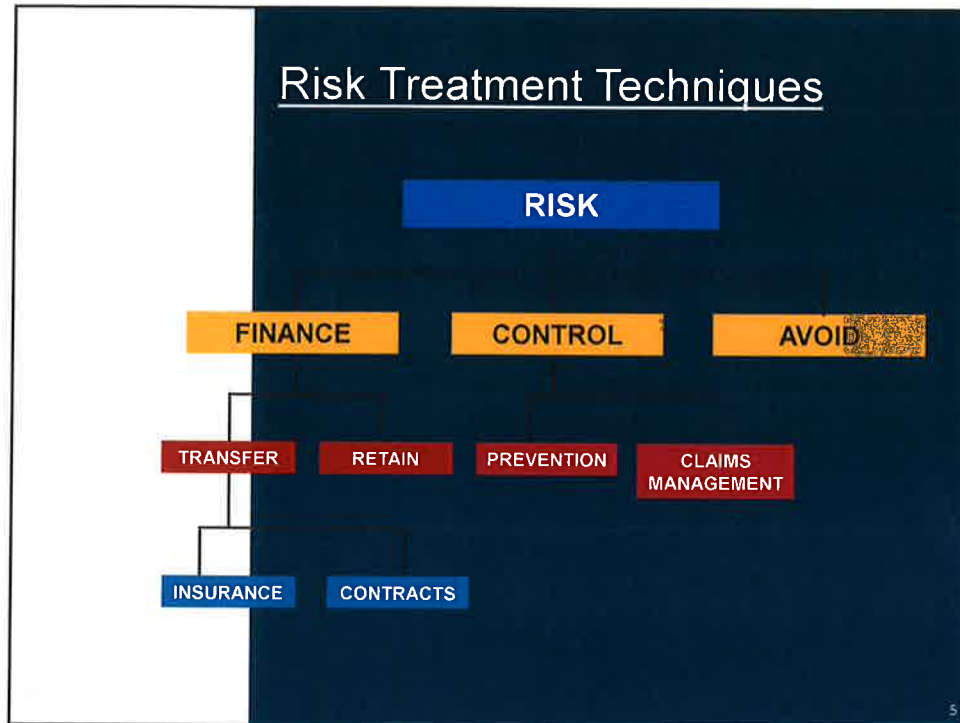
- Purpose of Contract Guidelines
- Why Transfer Risks by Contract
- Contract Considerations
- Why Use Insurance Clauses
- Reasons for requesting Additional Insured (A/I) Status
- Some Problems for Additional Insureds (A/I)
- Additional Insured Endorsements
- Certificate of Insurance
- Conclusion
- Q&A

## Purpose of Third Party Contract Guidelines

- To assist organizations and its departments and contract managers in understanding and incorporating insurance and indemnification requirements into contracts
- Various types of contracts
  - Construction
  - Vendor
  - Supplier
  - Professional Services
  - Lease Agreement

## Purpose of Third Party Contract Guidelines

- Easy to use guidelines – that can be copied into a contract document.
  - Template guidelines - example of best practices
  - Guide to Auto Liability and Workers' Compensation Exemptions
  - When to require coverages such as:
    - Professional liability
    - Pollution Liability (including Contractors Pollution)
    - Commercial Crime
    - Builders Risk/Installation Floaters on Construction Contracts
  - Overview of:
    - Policies for Small Business and Sole Proprietors
    - Financial Guarantees – Bonds and Letters of Credit



## Risk Management Techniques

- Finance

*Probably the one you thought of first! You finance losses by paying them with your own money or transferring them through insurance and/or by contract.*

## Why Transfer Risk by Contract?

- Protect Your Financial Resources
  - Insurance / Self Insurance
- Contractor has better:
  - Ability to Control Risk
  - Knowledge of Risk
  - Financial Capacity / Resources
- Clarifies Understanding / Responsibilities of Parties
  - Clear and Unequivocal

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## Contract Considerations

- Contract Consideration
  - Defense Provisions outlined
  - Standard contracts with minimum insurance standards
  - Activities without contracts
  - Special risk areas
- Identify types of contracts to be standardized
  - Construction
  - Consulting
  - Leases
  - Goods and Services

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## Contract Considerations

- Evaluate the Exposure
  - Human Resources
  - Vehicles/Equipment
  - Communications Equipment
  - Facilities
  - Transportation
  - Special Events

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## Contract Considerations

- Real Versus Perceived Risks...

When discerning whether an activity is a real risk or a perceived risk, one should determine the level of danger involved. The higher the potential for danger and subsequent claims, the more real the risk.
- Apply the 80/20 Rule
  - Certain activities (20%) that account for the majority (80%) output

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## Contract Considerations

- Take it one step further to identify special risks procurements . . .
  - Environmental (storage, disposal, removal, recycling, remediation and abatement, transport)
  - Activities that occur outside Colorado
  - Elevator and Boiler Maintenance
  - Construction
  - Design Professionals
  - Software / Technology (design, data hosting, etc.)

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## Why Use Insurance Clauses

- Supports Indemnity Clause
  - Should work in conjunction with Insurance requirements
  - Transfers the potential loss exposure to the party likely to be the most responsible
- Assigns Specific Rights Under Contractor's Policy
- Defines (hopefully) the Types and Limits of Insurance
  - Can be used as a Measure of Liability
  - May extend coverage beyond Indemnity Clause

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## Reasons for requesting Additional Insured (A/I) Status

- Assures greater safety in a risk transfer – a “safety net” for a hold harmless agreement
- Makes the A/I “feel” better just in case the hold harmless provision does not stand up to court scrutiny or statute restrictions
- It can give direct rights under the other party's insurance to those parties who attempt to transfer potential risk
- It may protect the party(ies) who attempt to transfer of potential risk from subrogation
- Potential for higher total limits available
- Potential reduction of your insurance costs
- To have defense provided outside the limits
- If not requested to be an additional insured via contract, the insurance policy will pay for legal expenses within the limits of liability

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## Some Problems for Additional Insureds (A/I)

- Compliance
  - A/I may unintentionally violate policy provisions
  - Consultant/Contractor/Vendor may not completely understand the limitations of the obligation to the A/I as specified in the policy
- Loss of defense control
- “Other Insurance” conflicts
  - Other insurance policy provisions may not clearly indicate which policy is primary
  - Non-standard CGL policies (and xs liability policies)
- Increased probability of disputes over coverage
- Limited coverage under current forms
  - Elimination of sole negligence of A/I
  - Forms may only cover current operations not completed operations
- Dependence on someone else's insurance

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## Additional Insured Endorsements

- If Additional Insured, you may not need primary/non-contributory language in contract – ISO addresses this issue; other GL policies may not
- Be aware of key changes to Additional Insured Endorsements
  - Eliminates coverage for sole negligence of A/I
  - Coverage restricted to the extent permitted by law (statutory)
  - Coverage scope is restricted to that which is required by contract (cannot be broader than that which is required by contract)
  - Limits the amount that will be paid on behalf of the A/I to the amount required in contract, whichever is less
- Review limits to make sure the limits are adequate to meet your contract needs

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## Most common Additional Insured Endorsements

- CG 2010 – Additional Insured, Owners, Lessors or Contractors, Scheduled Person or Organization
  - Only extends Bodily Injury, Property Damage to additional insured caused by in whole or part by:
    - Named Insured acts or omissions, or
    - The acts or omissions of those acting on the Named Insured's behalf
  - Must arise out of the named insured's **ongoing operations**
  - Must be at the location listed on the endorsement
    - You don't know unless you ask for a copy of the endorsement
  - No coverage when the Named Insured's part of the project has been completed
- CG 2037 Additional Insured – Owners, Lessees or Contractors – Completed Operations
  - Extends Bodily Injury and Property Damage to the listed party **at the location scheduled**
  - Provides completed operations only

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## Most common Additional Insured Endorsements

- CG 2011 – Additional Insured – managers or Lessors of Premises
  - Extends liability coverage to the named party arising out of the rental or premises to the Named Insured
  - Must arise out of the ownership, maintenance or use of the designated premises by the Named Insured
  - Applies only to the part leased to the Named Insured
  - Exclusions/Limitations
    - No coverage for losses after the named insured is no longer a tenant
    - Losses from any construction or maintenance performed by or on behalf of the AI is not covered
- CG 2015 – Additional Insured – Vendors
  - Only extends Bodily Injury, Property Damage to additional insured named in the endorsement
  - Must arise out of the Named Insured's products distributed or sold by the Vendor in the normal course of business
  - Excludes:
    - Any unauthorized express warranty
    - Any physical or chemical change made by the Vendor
    - Repackaging

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## Most common Additional Insured Endorsements

- CG 2028 Additional Insured – Lessor of Leased Equipment
  - Extends Bodily Injury, Property Damage to the listed party
  - Must be caused in whole or in part by the Named Insured's maintenance, operation or use of equipment to the Named Insured
  - Exclusions/Limitations
    - No coverage if the lease has expired
    - No coverage for lease of mobile equipment
      - Need to have endorsement on the Auto Policy for any mobile equipment exposure

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## Automatic Status Additional Insured Endorsements

- Why used?
  - Convenience – policy doesn't to be endorsed
  - Easier Administration
- Challenges/Problems
  - Not truly "blanket"
  - Coverage triggered by an event as defined in the endorsement
  - Written Contract required
  - No coverage for sole negligence of the A/I
  - Limitations and exclusions vary by endorsement
- Frequently used Automatic Status A/I endorsements
  - Lessor of leased equipment
  - Owner's Lessees or Contractors CG 2033
    - No completed operations – still need to request CG 2037 Endorsement
    - Does not include subcontractors (upstream)
  - New Endorsement – CG 2038 Owner's, Lessees or Contractors
    - Includes coverage for upstream parties who do not have a direct contract with the Named Insured
      - Your organization must require that subcontractors be included in contract

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## Waiver of Subrogation

- Subrogation Waiver – an agreement between two parties in which one party agrees to give up the right to recover against another in the event of a loss
- Most insurance policies allow waivers under certain circumstances
  - Waived prior to loss
  - Waived in writing
  - Waived after loss would violate principle of indemnity
- Requesting in contract formalizes the contractual requirement
- Gives the other party a written confirmation that the contractual requirement will be recognized by the insurance carrier
- Difficult or impossible to get on workers' compensation

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**ACORD** **CERTIFICATE OF LIABILITY INSURANCE** DATE APPROVED: \_\_\_\_\_

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 must be endorsed. If SUBROGATION IS WAIVED, notice to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights in the certificate holder in favor of such endorsements.

<b>INSURED</b>	<b>INSURER</b>	<b>DATE</b>
<b>ADDRESS</b>	<b>CLASSIFICATION</b>	<b>CLASS CODE</b>
<b>COVERAGE</b>	<b>CERTIFICATE NUMBER</b>	<b>REVISION NUMBER</b>

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED PARTY ABOVE FOR THE POLICY PERIOD INDICATED. FOR THE PURPOSES OF ENDORSEMENT, THESE ARE CONSIDERED AS ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THE CERTIFICATE MAY BE ISSUED FOR ANY POLICY IS NOT NECESSARILY COVERED BY THIS CERTIFICATE.

LINE	TYPE OF COVERAGE	INS. NO.	POLICY NUMBER	INSURER	CLASS CODE	LIMITS
1	COMMERCIAL AUTO LIABILITY CLAIM MADE (OCUR)					COMMERCIAL AUTO LIABILITY \$ CLAIM MADE (OCUR) \$ MED PAY (MAXIMUM PER PERSON) \$ PERSONS AND EQUIPMENT \$ AUTOMATIC SUPPLEMENT \$ PRODUCTS LIABILITY ADD \$
2	GENERAL LIABILITY BODILY INJURY PROPERTY DAMAGE ADVERTISING NON-EMPLOYEES ACCIDENT					GENERAL LIABILITY \$ BODILY INJURY \$ PROPERTY DAMAGE \$ ADVERTISING \$ NON-EMPLOYEES ACCIDENT \$
3	PRODUCTS LIABILITY BODILY INJURY PROPERTY DAMAGE ADVERTISING NON-EMPLOYEES ACCIDENT					PRODUCTS LIABILITY \$ BODILY INJURY \$ PROPERTY DAMAGE \$ ADVERTISING \$ NON-EMPLOYEES ACCIDENT \$
4	WORKERS COMPENSATION EMPLOYERS LIABILITY NON-EMPLOYEES ACCIDENT SICKLEAVE BENEFIT SICKLEAVE BENEFIT					WORKERS COMPENSATION \$ EMPLOYERS LIABILITY \$ NON-EMPLOYEES ACCIDENT \$ SICKLEAVE BENEFIT \$ SICKLEAVE BENEFIT \$

DESCRIPTION OF OPERATIONS (CAPACITY, VOLUME, SEASON, etc.) SHOULD BE INDICATED IN THIS SPACE IF APPLICABLE

**CERTIFICATE HOLDER** **CANCELLATION**

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## Comments on the ACORD Certificate of Insurance

- Information purposes only
- Does not amend the policy
- Only a representation of the policy
- Cancellation wording:
  - SHOULD ANY OF THE ABOVE POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THERE OF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH POLICY PROVISIONS
    - A/Is will not be given notice by the carrier – not required by Colorado state laws
- Warnings:
  - If added as Additional Insured the policy must be endorsed (except with the Automatic A/I endorsements)
  - Certain policies must be endorsed for Waiver of Subrogation (workers' compensation)

## Conclusion

The insurance marketplace is far from static, and the current status of the insurance marketplace should be reflected in insurance requirements.

During competitive market cycles, it is possible to service high limits of liability, special coverage modifications, and other concessions from insurers for reasonable costs.

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## Q&A

What questions do you have?

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