



Record Retention for Contractors

The proper retention of records for all contractors is an important task when dealing with construction claims. If this task is ignored, your ability to transfer the financial risk of construction lawsuits to your insurer or your subcontractors' insurers could suffer, and cost you time and money to protect and defend your company. Ideally, all documents should be kept for many years, as outlined below.

Issues to Consider with Your Attorney and Broker:

- Developing and sticking to a record retention policy
- When and how to file claims
- How to preserve records—hard or electronic copy

Property Damage Claims:

At a minimum, for property damage, the contract, certificates of insurance, and OCIP/CCIP manuals should be kept for twelve years. This is important because construction defect claims can be brought within 10 years after the completion of a project. If you were not the general contractor, there is a potential of a cross-complaint being filed and served on you by a general contractor after they are sued. Rule of thumb: Hang onto your records for 12 years to be safe. Why? Construction defect claims are viewed as continuous losses from the date of project completion or the date you completed your work on a project, 10 years plus 2 years for a cross-action.

What about Bodily Injury Claims?

This is a tricky problem, as the time to bring a claim is almost limitless, especially from bodily injury claims involving asbestos.

- Asbestos injury: Injury due to asbestos exposure is considered to be a *continuous loss*.

The biggest issue here is that most insurance policies issued on or after 1990 had some form of an asbestos exclusion. Many policies issued before 1990 did not have an exclusion so the minimum task for a contractor is to have a record of all insurance policies issued during that time frame. The record should include policy numbers and policy periods. Many times, insurers will not grant you any coverage unless you have a record of these two pieces of information. A policy declarations page would be best.

- Outside of asbestos: Bodily injury claims can occur for a variety of reasons. Occurrence insurance policies usually respond to these claims. Example: You install a balcony in 1990, and it collapses on January 1, 2018, and injures people. Your 2018 occurrence policy should respond to the loss.

Again, it is best to have at least a copy of the declarations page of your insurance policy ready to be offered to your insurer. You should also maintain all certificates of insurance for these projects to maybe transfer the risk downstream to another contractor.

Incidentally, insurers typically will not help you recreate your insurance policy. If you have the expectation that you can discard pertinent policy information, and be protected by a former insurance broker or insurer, you are mistaken. Many of their records are destroyed after seven years.

Most important are your contracts with owners and any subcontractors. Why? Your contracts usually have indemnity agreements incorporated into them. Sometimes these express indemnity agreements are stronger than your additional insured rights. That alone is a good reason to keep them. Most insurance policies now require a written contract before their insurance policy is triggered. No signed contract usually means no additional insured coverage.

We recommend preserving the following construction records to get the best results:

1. Final contract between you and the upstream party (GC or owner). Don't keep draft contracts with handwritten notes that contradict what was agreed to in the final contract. Make sure that the contract was signed by ALL parties.
2. All change orders and budget documents
3. Scope of work, shop drawings, bid exclusions and specifications (if not part of the final contract)
4. Your insurance policies—especially general liability, umbrella, pollution and professional liability
5. Certificates of insurance, additional insured endorsements and subcontract agreements with all of your subcontractors, suppliers, and lower tier subcontractors
6. Minutes of meetings, and all RFI submittal logs
7. Jobsite reports, site observations and photographs
8. List of your key persons responsible for the project
9. OCIP/CCIP manuals for any wrap-up projects

Contact Greg Roush at 408.418.2736, groush@pentarisk.com, or your PentaRisk broker or account executive for more information on record retention. Visit our website at <http://pentarisk.com/>.

California

PentaRisk Insurance Services
2033 Gateway Pl Ste 150
San Jose CA 95110
p 408.418.2720 · f 408.418.2721
CA License Number 0G47886

Georgia

PentaRisk Insurance Specialists
3715 Northside Pkwy
Bldg 400 Ste 550
Atlanta GA 30327
p 404.809.2530 · f 404.809.2531
GA License Number 186880

Alabama

PentaRisk Associates of Alabama
500 Office Park Dr Ste 420
Birmingham AL 35223
p 205.874.9700 · f 404.809.2531
AL License Number 0415532

Illinois

PentaRisk Associates of Illinois
600 Spring Hill Ring Ste 201
West Dundee IL 60118
p 847.649.5000 · f 847.836.1431
IL License Number 100288418