

CONSTRUCTION BLOG

## Review the Obvious

AUTHOR: CARL LOTHMAN

Construction business owners know the construction field has more than its fair share of liability risk. Prudence dictates an occasional review of the obvious in monitoring and managing a construction business, in order to make sure basic liability protections are in place to minimize the inherent risks.

### Ownership Structure

Owners' personal assets will be exposed to risks in the construction business unless the business is operated as either a corporation, which can be a C corporation or S corporation for tax purposes, validly formed and in good standing under state law, or a limited liability company (LLC), which can be a disregarded entity if one member or owner, C corporation or partnership for tax purposes. Absent unusual circumstances allowing for "piercing the corporate veil", any claim against the corporation or LLC will be limited to the assets of that entity only.

It is a good practice to verify frequently that the entity is in good standing in each jurisdiction where it is registered, as complications can quickly arise in the event of forfeiture or default. This is also a good time to make sure your shareholder and other governance type agreements are up to date.

Directors and officers liability insurance (D&O) should be considered as an additional protection for acting directors and officers, especially where non-owners or outside advisors act in those roles.

### Insurance Coverages

A variety of insurance coverages are available to insure the many risks inherent in the construction field. Some are basic, relatively standard coverages, while others are tailored to very specific risks. New risks, such as cybersecurity breaches, continue to emerge, and insurance coverages continue to evolve to meet those risks. Coverages can include:

1. Commercial general liability (CGL) and property insurance for buildings and equipment
2. Auto/fleet coverage
3. Workers compensation
4. Employment practices (EPLI)

5. Fiduciary
6. Cybersecurity
7. Employee theft
8. Builder/contractor risk
9. Contractor errors and omissions insurance (E&O)
10. Contractual liability endorsement (insuring liabilities assumed by contract)

It is essential to work with an experienced, knowledgeable insurance broker familiar with your business, who can also help identify risk areas throughout the enterprise.

#### **R Policies, Job Descriptions and Reviews**

Keeping policies and job descriptions current, and timely performing reviews of both your own personnel and also other firms you do business with (developers, general contractors, subcontractors) can help you identify problem areas, or people or companies you should not be working with. A claim avoided preserves your bottom line.

#### **Regular Training**

Regular employee training such as safety procedures, human resources policies and information technology practices, helps prevent unnecessary risk creeping into your organization.

#### **Consider a "Wellness" Business Legal Audit**

Our firm offers a business legal audit that assists you in reviewing the areas of your business that place it at the most risk. This can be a great help in identifying potential risks that you may have overlooked or have allowed to seep into your business.

The process of maintaining risk minimization in your organization requires ongoing monitoring and updating.