

Defined

INSURANCE NEWSLETTER - VOL 1

Liability - Plant - Works - Motor Fleet - Professional Indemnity



Ascend Construction

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When is a Bona Fide Subcontractor actually a Labour only Employee?

There are some areas that need consideration when employing subcontractors and the potential exposure to your insurance arrangements.

Many clients use subcontractors in the course of their business. This is quite normal of course and the client will expect to be insured for their use.

But do they know the potential pit falls?

Subcontractors fall into two classes. What are they and how do you insure?

Labour only subcontractors are individuals who are to all intents and purposes temporary employees but not paid via your

payroll. Tax and insurance treatment may differ but the main qualifier in the insurance world is that they work under your day to day control – where and when you direct and without the right to subcontract their work or provide a substitute for their labour. They may or may not provide their own tools and they may or may not hold their own Public Liability insurance.

You are responsible for their welfare and their actions while they are working for you and you must insure as if they were employees.

You will need to advise your insurer of payments to labour only sub-contractors or, on headcount based policies, the number of contractors involved.

Watch out for:

Business description

- Your policy business description must allow for the inclusion of their activities. E.g. if your policy says Plastering you can't employ a labour only subcontractor to do electrical work and expect your insurance to respond.
- If your policy is headcount based with an optional extension for temporary workers be careful – regardless of your policy business description the extension may exclude temporary employees (and their actions) when employed for some types of work. Even if you are insured for that work using employees on your payroll any claim you may make could be effected.

Bona-fide subcontractors are all others contracted to perform on your behalf work which you have yourself contracted to perform.

You will need to advise your insurer of payments to subcontractors

Watch out for:

Policy conditions in relation to use of bona-fide subcontractors. These will probably include:

- A requirement to discover and record their insurance details to ensure they are insured for the time they work for you and for the type of work done
- A requirement that they insure for at least the same Public Liability limit as you do.

Remember, these conditions are standard for all buyers of that policy with your insurer and your broker may be able to negotiate changes in your own case.

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Claim Denied - Does your business description fully describe your activities?

Does your business description on your policy documentation fully describe all your business activities? We often discover inaccurate or incorrect descriptions which could make a policy void in the event of a claim, we explain more...

A man is working on a building site somewhere in Essex. A trained operator, he is digging a hole with a JCB excavator. Unnoticed by him a fellow employee climbs into in the hole and he catches him a blow on the chest and arm with the bucket of the machine then, panicking, he hits him again on the head.

The man is rushed to hospital. He is severely injured and will never work again but he survives. The estimated cost of a claim is assessed at £2million.

Shouldn't happen but of course these things do from time to time and that's

what insurance is for, right? The employer, a subcontractor, has Employer's Liability insurance for £10million. But the insurer denies the claim. Why?

Because the business description on the policy is 'Bricklayers' they say. That doesn't include use of a JCB or excavation. No-one ever told them the insured might do this kind of work and they wouldn't have insured him if they had known.

So – over to the main contractor – he has overall responsibility for site safety and has Public Liability insurance for £5million. But 'not us' says his insurer – the policy has conditions around the use of sub-contractors, you must check that they are insured for the work to be undertaken – they weren't and you didn't.

The main contractor and sub-contractor are both out of business

[Read more](#)

Ascend Nominated in 8 Industry Awards

Ascend have been nominated for a record 8 industry awards being presented over the next 4 weeks.

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What can you do?

- Review your policy
- Consult with a specialist broker
- Consider policy amendments
- Protect your investments

Get expert help today. Contact:

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Senior Account Executive
stuart.belbin@ascendbroking.co.uk



A Must-Know for Construction Professionals

Understanding the LEG3 clause following the Archer vs Arch case

As a construction professional, you of course understand that your projects face numerous risks and that insurance is essential to safeguard your investments. One critical aspect of Builder's Risk insurance is the LEG3 clause, which has been under legal scrutiny recently.

The LEG3 clause excludes coverage for defective design, materials or workmanship but covers resulting damage to other parts of the project. A recent court case in America, Archer v Ace, exposed ambiguities in this clause that could lead to unexpected coverage gaps.

Let's take a closer look at the Archer v Ace case and what it might mean for your construction business.

A concrete case

Archer v Ae proved to be highly significant in the insurance and construction law fields, particularly regarding the interpretation of the LEG3 defects exclusion used in Builder's Risk policies. **LEG3 is one of three defect exclusions created by the London Engineering Group (LEG)** to address different levels of coverage for defective work or materials.

In the case of Archer v Ace, the issue revolved around concrete that was found to be defective due to an improper mix of materials, which reduced its strength.

The policyholder filed a claim under their insurance policy to cover the cost of repairs, but the insurer denied it, arguing that the concrete was never in a satisfactory condition and therefore did not suffer damage that would be covered by the policy.

The court had to decide two key issues: whether the property suffered 'damage' and whether the LEG3 exclusion was ambiguous. The court found that there was enough ambiguity in the LEG3 clause to rule in favour of the policyholder, allowing the case to proceed, rather than granting the insurer a summary judgment. This decision, along with a similar earlier case, suggests that courts may interpret LEG3 in a way that favours policyholders, potentially broadening coverage under Builder's Risk policies. This has raised concerns in the insurance industry, prompting discussions about revising the LEG3 clause to clarify its intent and application.

In essence, Archer v Ace signals a potential shift in how defects exclusions like LEG3 might be interpreted in the future, possibly leading to changes in policy wordings to avoid such ambiguities.

So, what does this mean for you?

Simply put, the clarity of the LEG3 clause in your policy could significantly impact the extent of your coverage in the event of a defect-related issue. Courts have found this clause ambiguous, which can lead to disputes and potential losses if your policy doesn't explicitly outline what is and isn't covered.

Not sure if your Builder's Risk insurance adequately protects your projects? Contact Ascend today to review your policy and ensure you're fully covered. Let's work together to safeguard your investments with clarity and confidence.....



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Ascend & Chelmsford City FC are delighted to announce the renewal of its long-standing relationship with Ascend Broking Group for the 2024/25 season.

Ascend Broking will be entering its third year as front of shirt sponsor in partnership with Chelmsford City FC.

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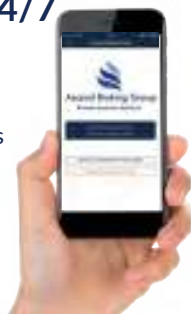
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Ascend Broking were awarded Broker of the Year by The Modern Claims Awards 2024!

Ascend are thrilled to be awarded Broker of the Year by The Modern Claims Awards 2024! It is an incredible achievement to have our hard work recognised, we strive to provide only the best service to all our clients and help them navigate the insurance landscape with industry leading advice. [READ MORE HERE](#)

Ascend Broking feature in a number of articles in The Business Times magazine

Our managing director Matthew Collins featured in 3 recent articles covering cyber insurance, business interruption and predictions for 2024.

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