How To Insure Joint Ventures

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A joint venture (JV) is a separate entity formed by the teaming of two or more persons or entities for the purpose of engaging in an activity or operation with the intention of earning a profit (or accomplishing some other goal). Each member of the joint venture has an equity stake in that each shares in the venture's income and expenses at some pre-negotiated level. Generally one member of the JV is the managing member responsible for making final business decisions regarding the operation of the joint venture (for this additional duty, they are often paid a fee or some additional remuneration). More in-depth information on legal particulars of joint ventures is outside the scope of this article and expertise of its writer.

Design and implementation of a joint venture's insurance program is based on the JV's legal structure, the agreement between or among the JV members and, in part, on the purpose for which the joint venture is created. Three keys to planning a joint venture insurance program are: 1) choosing which of the three available insurance options to apply; 2) assuring that the chosen insurance program accomplishes two main goals; and 3) considering the JV's eventual demise in the planning of the insurance program.

Legal Structure

Joint ventures can be set up as a partnership, limited partnership or corporation. Regardless of the chosen legal structure, the result is a separate legal entity. The power or ability of any one member of the joint venture to legally bind other members to specific commitments rests in the legal structure.

Just as in any other insured entity, the legal status of a joint venture affects certain coverages; most notably, the workers' compensation policy.

A Joint Venture's Purpose

Why was the joint venture created? Was it created to "conduct an activity" such as developing property for a residential area, commercial office park, industrial complex or some other like project? Or was the JV created to combine the resources and talents of compatible industries to run an operation? An example of "running and operation" may include a supplier and manufacturer forming a joint venture and opening a plant to produce a product more efficiently than the market as a whole.

Whether the JV is created to conduct an activity or run an operation will likely dictate the resources contributed by each member of the venture. "Man power" and time may be all that is required to conduct an activity; where running an operation likely requires the addition of plant and equipment to the venture. The breadth of resources contributed to the venture directly relates to which of the three insurance options (listed below) is the best choice.

Two Goals of a JV Insurance Program

Although a bit out of order, understanding the two goals of a joint venture insurance program is necessary to adequately analyze the three common options for insuring a joint venture.

Since a properly formed joint venture is a distinct legal entity separate from its founding members, it has the rights of any other person or entity. Among these is the right to sue, be sued and recover from any entity that causes it harm - including the founding members.

Because of the "rights" afforded to the joint venture, **severability** and **removing the ability of one carrier to subrogate against any member of the joint venture** are the two insurance program goals that must be accomplished. Regardless of which of the three insurance options is chosen the ultimate program requires the use of proper forms and endorsements necessary to assure severability and non-subrogation among the various entities.

Accomplishing these goals is a balancing act. Each entity must be held responsible for its own actions without limiting or negating the availability of coverage for any other entity (severability). At the same time, because the joint venture and its members are contractually conjoined, the ability of one member to recover from another member tends to violate the spirit of a joint venture - the sharing of revenues and liabilities as established in the founding agreement; thus the need to remove subrogation rights.

Joint Venture Insurance Options

Joint ventures, as separate and individual legal entities, require insurance protection just like any other entity. However, the options for securing the necessary protection are broader than those available to most other insured operations. Three main options exist for managing the insurance exposures created by a joint venture:

1. Each member insures its own exposure created by the joint venture under existing coverage (via alteration of their own policies);
2. One member insures the joint venture in totality; or
3. The joint venture procures its own insurance.

Each Member Insures its Own Risk
This may be the least beneficial option for every member involved. First, use of this option is viable only when there is limited investment by the member parties; essentially limited to "man power" and time. Basically, this is a viable option when the JV is created with the sole purpose of conducting an activity on a **short-term** basis; this option would not work well if there is shared use of property or equipment.

Use of this option requires several specific endorsements to both the commercial general liability (CGL) and workers' compensation (WC) policies.

Commercial General Liability: CGL policies specifically exclude joint ventures, even if newly formed, which are not specifically listed as a named insured. Each member forming the JV must first specifically endorse the CGL naming the joint venture as an insured. And, to accomplish the second JV coverage goal (waiving subrogation), each member should attach the Additional Insured - Designated Person or Organization (CG 20 26) to the CGL naming the other members of the JV as additional insureds.

Workers' Compensation: Because a properly created joint venture is essentially a separate legal entity, employees of any members working for or on behalf of the JV may be considered "borrowed servants" of the venture even though not its direct employees. If the joint venture has none of its own employees and is not required by the subject jurisdiction to provide WC, each member would protect the joint venture by attaching the Alternate Employer Endorsement (WC

00 03 01 A) to its policy naming the joint venture as the alternate employer. This option would not be available if the joint venture is required by the jurisdiction in question to provide its own coverage as a direct "employer" rather than a "special" employer.

Secondly, each member would attach a Waiver of our Right to Recover from Others Endorsement (WC 00 03 13) in favor of the other members. Combining these endorsements ensures that the employee is compensated and none of the members is held liable for any injury they may have caused to another member's employee.

One Member Insures the Joint Venture in Totality

The specifics of this option are varied based on the agreement between or among the members. If the member responsible for providing coverage chooses to add the joint venture to its own policy, essentially the same steps detailed above should be followed. However, if the member chooses to place separate coverage, the steps delineated below will apply. Any combination of these may be used if this option is chosen.

The Joint Venture Procures its Own Insurance

As a separate legal entity, this may be the most appropriate option of the three. Beyond being the cleanest choice for protecting the joint venture, there are other advantages for each of the members:

- Loss experience is assigned to the joint venture rather than the members;
- Losses caused by the JV do not affect the limits of coverage available to the members;
- Claims are handled by one carrier rather than, potentially, several;
- The members of the JV can be named as additional insureds on the joint ventures policy rather than the reverse (as in option 1 above); and
- Only one call is necessary to request a certificate or report a claim.

Another advantage of separate coverage is the breadth of protection that can be procured. This is the best method when the joint venture is formed to "run an operation." The "operation" exposure may include plant, property or equipment; trying to insure these on individual member policies can be cumbersome.

Commercial General Liability. As stated above, the joint venture should name each member as an additional insured to protect them from vicarious liability for the actions of the JV. The same CG 20 26 discussed in option 1 should be used. Reciprocally, each member should name the other members as additional insureds to protect each for the actions of the other (accomplishing the second goal of JV insurance). The same CG 20 26 can be used, being careful to specifically limit the additional insured status to apply only to liability arising out of the activities of the joint venture. The JV should probably not be added as an additional insured to the individual member's policies as this has the potential to severely hamper the application of the "Other Insurance" condition in the CGL. Each member may want to name the JV on their own CGL to provide an excess layer of protection should the JV's limits not be sufficient.

Workers' Compensation. Direct employees of the joint venture can be insured on a separate workers' compensation policy in the name of the joint venture. The only required modification is attachment of the Joint Venture as Insured Endorsement (WC 00 03 05). This endorsement limits coverage to the employees of the joint venture and specifically excludes coverage for employees of the member companies. Joint ventures are eligible for experience rating based on the mathematical averages of the experience modification factors of the member companies in the beginning; once the joint venture has existed long enough on its own, a mod for the JV is calculated.

D**issolution of the Joint Venture**

Rarely do joint ventures run into perpetuity, thus planning the insurance protection necessary to protect the members following the JV's eventual demise must be planned. The options for insuring a prior joint venture are essentially the same as those available for providing coverage during the JV's existence.

Liability Coverages. If the members choose to individually insure the post-closure products or completed operations exposures of the joint venture, they must remember to specifically name the JV as an insured on the CGL. However, the members do have the option to continue insuring the defunct JV separately by attaching a proprietary or manuscripted discontinued operations endorsement to the JV's policy. Also, if any coverage was provided to the joint venture on a "claims made" basis, a decision regarding the purchase of a supplemental extended reporting period must be made.

Workers' Compensation and Other Coverages: Because the entity to which these coverages were assigned no longer exists, neither does the need for coverage. The workers' compensation policy can be cancelled and any property or other such policies can likewise be cancelled. Loss experience attributable to the joint venture stays with the joint venture and does not transfer to the members once the JV shutters.

Finishing Up

Joint ventures are unique entities requiring study and understanding. Entity type, member agreement and purpose make each JV different from every other one. This article is not intended to discuss every possible coverage needed by any particular joint venture, rather this article provides a basic overview of the insurance process used to evaluate coverage for a joint venture.