



Illinois Department of Transportation

2300 South Dirksen Parkway / Springfield, Illinois / 62764

December 18, 2012

CIRCULAR LETTER 2012-20

RAILROAD PROTECTIVE LIABILITY INSURANCE

**COUNTY ENGINEERS/SUPERINTENDENT OF HIGHWAYS
MUNICIPAL ENGINEERS/DIRECTORS OF PUBLIC WORKS/MAYORS
CONSULTING ENGINEERS**

At the August 29, 2012 IDOT/Industry Policy Committee meeting, the department was asked "Do contractors have to indemnify railroads for the railroad's own mistakes by obtaining railroad protective liability insurance?". On October 23, 2012, the department's Office of Chief Counsel provided a positive response to this question, as well as providing additional background information on railroad protective liability insurance. This response is attached for you information.

Please contact the Local Policy Unit at DOT.LocalPolicy@Illinois.gov with any questions.

Sincerely,

A handwritten signature in cursive script that reads "James K. Klein".

James K. Klein, S.E., P. E.
Acting Engineer of Local Roads and Streets

Attachment



Illinois Department of Transportation

Office of the Secretary
2300 South Dirksen Parkway / Springfield, Illinois / 62764
Telephone 217/782-5597

October 23, 2012

Dear Industry Partners:

At the recent 120th IDOT/Industry Policy Committee Meeting held on Wednesday, August 29, 2012, the department was asked to research the following question:

Question

Do contractors have to indemnify railroads for the railroad's own mistakes by obtaining railroad protective liability insurance?

Answer

Yes, contractors must indemnify railroads for mistakes committed by the railroad via railroad protective liability insurance (RRP), however the insurance coverage is narrowly tailored to only cover certain types of incidents. Contractors performing construction or demolition on or near property owned by a railroad must obtain RRP coverage before being permitted onto the railroad's property, regardless of who retains the contractor. Although the contractor purchases the RRP, the insurance actually covers the railroad for its negligence connected to the work being performed by the contractor. For example, when a contractor performs faulty work that results in injury or damages during construction, claims are often brought against the contractor for the faulty work and the railroad for poorly supervising the contractor. RRP would cover the railroad in this scenario. Railroads claim they require contractors to cover the railroad's negligence, because 1) as joint defendants, the railroad doesn't want to fight with the contractor over percentages of fault, they would rather have a joint defense with the contractor against the plaintiff and 2) railroads self-insure. They can't obtain insurance for less than \$20 million, so railroads have to cover claims of negligence themselves. For negligence committed by the railroad but relating to a contractor's work, the railroad simply passes the risk along to the contractor.

Regarding RRP, it is narrowly tailored as follows:

- The claim must arise from work that is performed by the contractor;
- The claim must arise during the time period of the construction or demolition. Once the project is complete, the coverage ends; and
- Only negligence claims against the railroad are covered. Gross negligence or intentional misconduct on the part of the railroad isn't covered.

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Requiring a contractor to obtain RRP is an industry standard throughout the country that is required by most, if not all, Class 1 railroads. It is not a requirement imposed by the Illinois Department of Transportation (IDOT). Since the insurance is an industry standard, IDOT most likely would not have any success in asking railroads to waive the requirement.

Thank you for the opportunity to comment on this matter. If you have any questions or need additional information, please contact Ellen Schanzle-Haskins, Chief Counsel, located at 2300 South Dirksen Parkway, Room 300, Springfield, Illinois 62764, by telephone at (217) 782-0692.

Sincerely,

A handwritten signature in black ink that reads "Ann L. Schneider". The signature is written in a cursive style with a large initial "A" and "S".

Ann L. Schneider
Secretary