

## WHAT IS... Railroad Protective Liability

Railroad Protective Liability (RRP) insurance is required of contractors who perform work on or around (within 50 ft) of railroad tracks, railroad right-of-way or owned railroad property.

The coverage is project specific and covers bodily injury and property damage arising from acts or omissions relating to job-site operations being performed by the designated contractor.

Railroad Protective Liability is a widely needed yet understood. Below is a referenced article to help us explain Railroad Protective Liability. Though it was written in 1994, it is still very relevant today.

### Railroad Protective Liability Insurance: A Review

*Reprint: From an April, 1994 article of NRC News (updated February, '99)*

*Published by: Railway Track & Structures Magazine*

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For years, Railroad Protective Liability (RRP) insurance has been imposed on contractors by railroads. But exactly why? Just what does this commonly referred to, but seldom understood liability insurance do, and whom does it protect? Here are some answers to these and other questions.

### RRP covers the contractor for his work for the railroad – right?

Sorry, no. In fact, the RRP policy does not protect the contractor at all – it protects only the railroad, since only the railroad is the “named insured” on the policy. It also states that the railroad is protected for acts or omissions arising out of the “work” at the “job location”. The “work” (including the contractor performing the work), and “job location” are specifically designated on the policy.

### What if the contractor gets sued?

The RRP is not a replacement for liability insurance for contractors. Every independent railroad contractor should have a Commercial General Liability (CGL) insurance policy with endorsements that delete any restrictions for indemnity or work performed within 50 feet of the railroad or railroad property. It is not unusual for both the contractor and the railroad to be named in a suit from an injured third party, if the injury or damage arises from the contractor’s work at the job location. The same suit might allege that the contractor was negligent in the way he performed his work, and that the railroad was negligent in supervising the work of its independent contractor. In this case, the contractor’s CGL policy should defend the contractor, and the RRP policy will defend the railroad.

### Do railroads have any insurance other than RRP?

Yes. Every operating railroad has some form of operating liability insurance protection. The RRP only protects the railroad from liability associated with specific work (including specific contractor), at a specific job location.

The RRP policy does not provide coverage for any liability that is not somehow connected with the work at the job that is being performed, and is so designated on the RRP policy. Linking the contractor, work and job location in the RRP policy makes it quite clear that it is the project-specific and not just a premises-and-operations policy for the railroad.

## So, if the contractor has insurance and the railroad has insurance, why do they need the RRP policy?

Railroads must make important decisions about how they manage their independent contractor risk. They can insure it under their own insurance policies, but that may drive up the cost of the railroad's own liability insurance. Also, they may have very high deductibles or retentions that may impose heavy financial obligations upon them in the event of a claim, particularly if it involves a contractor on their property.

Another option is for the railroad to transfer its risks contractually through indemnity agreements with its independent contractor, and also require special conditions and limits from the contractor's own liability insurance. But then, the railroad is relying solely on the contractor and the contractor's insurance to protect it. What if the contractor defaults, or has its insurance canceled, or limits through claims at other project locations?

Perhaps the best risk-management tool is a combination of contractual indemnification and specific, stand-alone insurance product, one that is written for a specific project that a specific contractor performs. This is generally the most common risk-management technique employed by today's railroads. That stand-alone policy is the common RRP policy being discussed here.

This risk-management technique is very similar to the one used by other project owners who are not railroads. In those cases, the owners usually require the contractor to provide an Owners Protective Liability (OCP) policy to protect the owner from claims against him, from specific work, at a specific job site or by a specific contractor. While the RRP and the OCP policies are similar in intent, the language is quite different for each and they are not interchangeable.

## Does the RRP policy cover rolling stock?

Under certain situations it does. In addition to protecting the railroad for bodily injury and property damage liability claims, the RRP covers property owned by, leased by or entrusted to the railroad for direct physical damage to that property. This includes rolling stock, other equipment, materials or any property assigned to a specific job site. Again, the policy benefits the railroad only, and loss to covered property must result from acts or omissions arising out of work at a job location. The RRP does not replace a railroad's property or rolling stock properties, since the RRP policy only pays for losses due to acts or omissions at the job. And, like the third party coverage under the RRP, the physical damages coverage stops when the contractor has completed his work.

## Does the RRP cover workers' compensation?

No, never. Workers' Compensation disability benefits, unemployment compensation laws and any similar laws are specifically excluded under the RRP policy. However, the exclusion does not apply to any obligation that the insured (the railroad) has under FELA. Thus, if the railroad is sued by an employee for injuries sustained due to acts or omissions arising out of work at a job location, the RRP would respond to protect the railroad.

### Does coverage continue if a contractor completes his work ahead of schedule?

No. Coverage for the railroad ceases when the contractor has completed the work. The policy is very specific about what constitutes completed work.

The RRP policy, therefore, does not afford any completed operation coverage for any party. The contractor's own CGL policy should protect it against claims arising out of completed work. The railroad's own operating liability coverage should protect it from any claims made against it for injuries or damages.

### What limits are usually required by the railroad for the RRP policies?

The limits of liability will vary from railroad to railroad, and even from project to project. The size and the complexity of the construction project may determine the limits required by the contract. Limits of \$2 million for each occurrence and \$6 million annual aggregate limits are quite common. Please note that the aggregate limit applies on an annual basis even though the RRP policy may be written for a period longer than one year.

### Is all RRP policy language the same?

No, but most companies use the Insurance Services Office (ISO) 1994 form, or a later version, and that form is accepted by most railroads. When purchasing or getting quotations for RRP, the contractor should advise of any differences between his form and the railroad's specifications. The railroad will often engage an engineering firm to create the bid documents for the work to be performed. These documents should contain the insurance requirements, including any specific RRP policy form, such as ISO, RIMA or ASSHTO, including modifications in the policy language.

### Where does the contractor get the RRP policies and/or quotations for RRP insurance?

There are several sources for RRP insurance. In some cases, the contractor's CGL insurance company may provide the RRP insurance as well. They will always issue a separate policy because the named insured is the railroad, not the contractor.

In many cases, the contractor's CGL insurance company cannot or will not issue the RRP policy. This may be due to limit requirements, special coverage requirements, long policy terms, reinsurance restrictions and a variety of other issues. The contractor may ask his insurance broker to obtain several quotations from several insurance companies that specialize in RRP insurance. Results can vary widely between insurance companies depending on the information submitted and the specific details of the job.

Occasionally, the railroads themselves may carry a “blanket RRP program” in which they enroll “contractors,” “work” and “job locations” on an ongoing basis. If the railroad has a plan such as this, it should inform you of such in the contract or bid instructions, and any related cost for participating in this program.

## What do contractors need to know in order to get RRP quotations from insurance companies?

Underwriters need some basic information in order to prepare quotations. This includes, but is not limited to, the following:

- The named insured (railroad and its name and address).
- The “contractor” name and address.
- Limits of railroad protective insurance requested.
- The descriptive title or job or contract number for the project
- A complete description of the work, where it takes place, how it impacts the railroad’s tracks (i.e. parallel, over, under or across tracks, etc.)
- Total job cost (estimate).
- Job cost within 50 feet of track(s).
- Percentage and types of work sub-contracted.
- Amounts (percentage or costs) of any specialty construction such as blasting, tunneling, rigging (crane hoisting), pile driving and such.
- Start date and estimated duration of project.
- Train traffic; number of freight and passenger trains during work hours and on a daily basis.
- Payrolls or cost associated with railroad employees such as flagmen or switchmen assigned to the job.
- Details on slow orders or other restrictions placed on tracks at the job site.
- Cost of and value associated with any work trains, other rolling stock or equipment assigned to the job.
- Underwriters may also ask for experience or other qualifications of the contractor and details concerning his own CGL insurance program.

Contractors should evaluate the protection afforded them by their own CGL insurance as well as RRP insurance requirements imposed upon them.

As a minimum, contractors should:

- Evaluate the indemnity and insurance provisions of your railroad contracts completely to make sure you comply with those provisions. In some cases, the RRP requirement may be an addendum to the contract. Your CGL policy should be amended so that there are no restrictions for contracts that involve work within 50 feet of a railroad or railroad property.
- Evaluate the property provisions in the contract with coverages provided by your installation floater and equipment policies. You may be held responsible for the entire project and it may be necessary to purchase a Builders Risk policy for the project. Or you may be responsible for materials and equipment

or work trains assigned to the project by the railroad. Materials may be protected under your installation floater. Other equipment and rolling stock assigned to the job may be added to your equipment floater, delete any exclusion for loaned, leased or rented equipment on this policy.

- Obtain a generic RRP application and become familiar with the information it asks for. Complete one for each contract and include sketches, drawings and other details that will help the insurance underwriter understand the project and its risk. Sometimes a background of your company and its railroad construction experience will be helpful.
- Allow as much time as possible for obtaining quotations for RRP insurance. Although a one or two day turnaround time can be achieved, results are usually better if they are not rushed, especially if there are unusual or complicated construction circumstances associated with the project.

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