



## COMMERCIAL LIABILITY

# Insurers Start Excluding AI Risk in Some Policies

SOME INSURERS have begun introducing exclusions for artificial intelligence-related claims from standard business insurance policies, creating potential coverage gaps for businesses that rely on AI tools for marketing, customer service, product development or daily operations.

The changes come after the Insurance Services Office, the industry's clearinghouse for policy language, introduced three new artificial intelligence exclusions for commercial general liability policies that insurers are beginning to add to coverage forms.

Roughly 86% of all U.S. property/casualty insurance policies contain some form of ISO language, meaning these exclusions could soon become widespread and leave coverage gaps for many employers when their CGL policies come up for renewal. Insurers are also starting to add similar language to other policies with a liability component.

## New coverage gap

The three new ISO endorsements include:

**CG 40 47** – The broadest form, excluding coverage for bodily injury, property damage or personal/advertising injury arising out of generative AI.

**CG 40 48** – A narrower endorsement excluding only personal and advertising injury claims tied to AI.

**CG 35 08** – An exclusion applying to products and completed operations liability coverage.

These endorsements could affect how coverage applies to certain AI-related claims, depending on policy language and endorsements.

A big concern involves Coverage B of the CGL policy, which covers claims such as defamation, invasion of privacy and misappropriation of advertising ideas among others. Under the new exclusions,

those claims may no longer be covered if they arise from AI-generated text, images, audio, video or code.

Even firms using third-party AI tools, rather than developing their own systems, may still trigger the exclusions. In some cases, incidental use of AI may be enough.

## The most vulnerable

The businesses likely to feel the greatest impact include:

- Marketing and advertising firms using AI-generated campaigns,
- Technology companies embedding AI into products or software,
- Manufacturers relying on AI-assisted product design,
- Professional service firms using AI to draft documents or communications, and
- Firms using AI tools in hiring decisions.

See 'Exclusions' on page 2



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## LEGISLATIVE ASSIST

# New 5% Retention Cap for California Contractors

CALIFORNIA CONSTRUCTION firms must now account for a major shift in how retention payments are handled on private projects. Senate Bill 61, which took effect Jan. 1, 2026, capped retention at 5% on most private commercial construction projects in the state, halving what had long been the standard 10% withholding.

Retention is money withheld from progress payments until a project is substantially complete. Owners have traditionally used retention as leverage to ensure contractors finish the job, address punch-list items and correct deficiencies. In turn, general contractors often withhold the same percentage from subcontractors.

Before SB 61, a 10% retention was common across California private construction projects. Contractors and subcontractors often had to finance payroll, materials and overhead costs while waiting months to receive the final portion of their earned revenue.

Supporters of SB 61 argued that the old system placed too much financial strain on contractors and subcontractors, particularly smaller firms operating on tight margins. By reducing retention to 5%, the law is intended to improve cash flow throughout the construction chain while still giving owners financial protection.

The law applies to private nonresidential construction projects and mixed-use residential developments taller than four stories for contracts executed on or after Jan. 1, 2026. Residential projects and smaller mixed-use developments are generally exempt.

## New rules are straightforward

- Owners cannot withhold over 5% when making progress payments to contractors.
- Contractors cannot withhold more than 5% from subcontractors.
- Total retention on the project cannot exceed 5% of the contract price.
- If the prime contract specifies retention below 5%, subcontract retention must match that lower percentage.

Courts are required to award attorney's fees to the prevailing party in compliance disputes, and the statute cannot be waived through contract language.

For contractors, the biggest challenge may be managing the transition. Projects signed in 2025 may still operate under 10% retention terms, while subcontracts issued in 2026 may be limited to 5%. That can create temporary cash-flow gaps for general contractors caught between old and new rules.

## What you can do

- Revise contract templates to account for the new rules.
- Ensure subcontract retention mirrors primary contract.
- Update accounting and billing procedures to track projects under different retention structures (if you still have projects signed in 2025).
- Communicate expectations clearly with subcontractors and suppliers.
- Reassess bonding requirements and risk-management practices.

Many industry observers expect the transition will become routine over time. States that previously adopted similar retention caps saw little disruption after implementation.



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## Exclusions Filtering into Other Lines of Insurance

All exclusions are also beginning to appear in:

- Directors and officers liability,
- Employment practices liability,
- Fiduciary liability,
- Cyber, and
- Errors and omissions policies.

### What you can do

Organizations that fail to evaluate potential coverage gaps could find themselves uninsured for lawsuits, regulatory

investigations or shareholder claims tied to AI use.

Organizations should consider taking the following steps:

- Identify where AI is being used throughout the organization.
- Strengthen internal AI governance and oversight procedures.
- Require human review of AI-generated content and decisions.
- Train employees on acceptable AI use.
- Evaluate contracts with AI vendors and third-party providers.
- Discuss AI exposures with us before renewal.
- Explore specialized protection options.

## CONSTRUCTION INSURANCE REPORT

# Carriers Scrutinizing Bad Risks as Cost Drivers Rise

AS THE construction industry continues to benefit from strong demand, the insurance market is becoming increasingly selective. Insurers are drawing sharper distinctions between contractors with good or challenged claims histories, according to a new report.

According to Aon's "2026 Global Construction Insurance and Surety Market Report," inflation, supply chain volatility, geopolitical uncertainty, cyber risk and growing catastrophe losses continue to influence insurance pricing and underwriting.

Across nearly every line of coverage, insurers are rewarding well-managed risks with stable pricing and ample capacity while scrutinizing accounts with poor loss experience, catastrophe exposure or elevated liability concerns.

Here's what the report says about four main construction lines.

## Construction property

Construction property market capacity is stable and pricing has generally softened modestly following a mostly mild catastrophe year.

That said, wildfires, severe convective storm, flood and earthquake exposures continue to drive underwriting decisions. While pricing for named windstorm, flood and earthquake risks has largely leveled off in many areas, contractors in high-hazard regions may encounter higher deductibles and more restrictive terms.

Water damage remains the leading source of routine construction losses, prompting underwriters to place greater emphasis on loss-control measures and preventive technology.

## Construction casualty

Commercial auto liability and physical damage continue to experience rate increases as insurers grapple with profitability and escalating claims costs. Contractors with large fleets, particularly those operating in California, Florida, Georgia, Illinois, Louisiana and Texas, face the most challenging conditions.

General liability rates have been relatively stable for many commercial contractors, but large civil contractors, residential builders and firms with significant wildfire exposure continue to see higher rates and more restrictive underwriting.

Meanwhile, nuclear verdicts and social inflation continue to pressure excess liability markets. Insurers are deploying smaller limits, requiring higher attachment points and becoming more selective about the risks they support.

## Professional liability

Professional liability conditions remain broadly stable for architects, engineers and contractors, particularly for organizations with fewer claims.

However, claims costs continue rising due to inflation, higher defense costs and large verdicts (as noted in the casualty section above). As a result, many carriers are pushing policyholders to take on higher deductibles and retain more of the risk, especially on large projects and loss-affected accounts.

## Surety

The surety market remains one of the healthiest construction insurance lines. Strong infrastructure spending, data center construction and public-sector investment continue to support growth, while overall surety capacity remains adequate.

That said, insurers are starting to pay out more in claims in the mid-market construction sector due to:

- Rising supplier non-payments,
- Increasing performance defaults, and
- Growing contractor insolvencies.

As a result, surety underwriters are paying closer attention to financial statements, backlog management and aggregate exposure.

For financially strong contractors, rates remain stable and capacity is available, according to the report.

## The takeaway

While capacity remains available across most lines, insurers are becoming more selective. Contractors that want favorable rates will need to focus on risk management, sound financial management, effective fleet controls and disciplined project execution.



## CONSTRUCTION RISKS

# Third-Party Litigation Funding Driving Liability Costs

CONSTRUCTION FIRMS are facing growing liability insurance costs, and one major factor behind the trend is the rapid growth of third-party litigation funding and so-called “nuclear verdicts.”

Third-party litigation funding involves outside investors financing lawsuits in exchange for a share of any settlement or court award. According to a recent report, litigation funders invested \$15.2 billion in the U.S. in 2023, and that figure could double by 2028.

At the same time, nuclear verdicts — jury awards exceeding \$10 million — have become more common in liability litigation.

Higher claims costs are driving up premiums for general liability, commercial auto, umbrella and excess liability coverage. Insurers are also tightening underwriting standards.

## How litigation funding works

Investors provide capital to litigation funders, who finance plaintiffs’ legal expenses in exchange for a portion of any settlement or verdict.

In injury lawsuits, third-party funders may back claims involving:

- Construction vehicle accidents
- Pedestrian injuries near jobsites
- Falls or equipment accidents
- Unsafe site conditions
- Negligence claims against contractors or subcontractors

Additionally, contractors, subcontractors and project owners may use outside funding to pursue claims involving delays, change orders, defective work, cost overruns or contract termination disputes.



## The dangers

One concern raised by insurers and defense attorneys is that third-party funding can discourage settlements. Funders may push plaintiffs to reject settlement offers in hopes of securing a much larger verdict at trial.

The financial exposure can be devastating if a jury award exceeds a company’s policy limits. For example, if a contractor carries \$2 million in liability coverage but loses a lawsuit resulting in an \$8 million verdict, the company could be responsible for the remaining \$6 million out of pocket.

## What construction firms can do

Construction executives should work closely with us, legal counsel and risk management teams to reduce their exposure to litigation risks and strengthen their defense if claims occur. Internally, your firm can reduce its risk by:

- Maintaining adequate general liability, professional liability, commercial auto and umbrella coverage limits. Umbrella is an important additional layer of protection on top of primary policies.
- Carefully reviewing contracts with subcontractors, suppliers and project owners and using strong risk-transfer language and indemnification provisions.
- Implementing comprehensive safety training and operational procedures.
- Documenting jobsite conditions, incidents and communications thoroughly.
- Enforcing commercial driver and fleet safety standards.
- Promptly reporting accidents and potential claims to insurers.
- Vetting subcontractors carefully.

Strong documentation and safety practices are important because plaintiffs’ attorneys can argue that lax standards played a role in any claim they are pursuing to influence juries toward larger awards.

Firms that focus on safety, documentation, contract management and adequate insurance protection can reduce their exposure and place themselves in a stronger position if disputes arise.

## Recent nuclear verdicts

- In New Hampshire, a jury awarded \$9 million to pedestrians who were struck near a construction project. The construction company and the state were assigned most of the liability.
- In California, a construction company was hit with a verdict exceeding \$27 million after a collision involving a motorcyclist.
- A New York tractor-trailer crash resulted in a \$17 million settlement after a driver made an improper turn into a distribution center, causing catastrophic injuries.