

Brick by Brick, Line by Line

Construction Contract and
Insurance Basics

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INTRODUCTIONS



Mark R. Azman, Partner, O'Meara, Leer, Wagner & Kohl, P.A.

Mark represents school districts, public entities and commercial insurers, focusing on construction and insurance coverage matters. Mark has handled numerous large-scale Minnesota and Wisconsin public school district matters involving construction matters, school safety, tort liability, and employment matters. Mark also negotiates contracts and other agreements in the fields of construction, joint enterprise, insurance, employment, and real estate. He has defended counties, cities and townships on numerous issues including election disputes, dram shop, employment disputes, feedlots, roads, water law, and zoning.



Shamus P. O'Meara, Partner, O'Meara, Leer, Wagner & Kohl, P.A.

Shamus represents a diverse group of clients from multinational corporations to emerging businesses, school districts and educational institutions, employers, risk managers and families. He serves as a mediator and arbitrator for construction, commercial and educational disputes, and as an expert witness and consultant for school and business safety and liability matters. He negotiates and handles all aspects of construction contract placement, public and private bidding, insurance and bonding issues, coordinates with various construction professionals, and handles claims and litigation involving construction projects.

Bryce Craig, Construction Property Underwriter, Zurich North America

Bryce is a Construction Property Underwriter at Zurich North American Insurance Company. He previously served for over ten years as a construction insurance marketing specialist at two prominent local insurance agencies.

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BRICK BY BRICK

LINE BY LINE

Construction Contract Basics

Construction Insurance Basics

CONSTRUCTION CONTRACT BASICS

- Full Names of the Parties
- The Contract Documents
- Scope of Work
- Project Cost and Payment Terms
- Schedule
- Changes
- Who's In Charge?
- Bonds
- Claims / Dispute Resolution
- Termination
- Warranty
- Damages
- Indemnity
- Insurance Procurement

CONSTRUCTION INSURANCE BASICS

- Builder's Risk
- Commercial General Liability (CGL)



THE CONSTRUCTION CONTRACT



IMPORTANT CONTRACT TERMS

- Full Names of the Parties
 - ▣ Identification of the contracting parties is important
 - ▣ Define who is the responsible under the contract
- The Contract Documents
 - ▣ Agreement
 - ▣ Changes and Addenda
 - ▣ Order of Precedence
 - ▣ Plans and Specifications
 - ▣ General and Supplemental Conditions
 - ▣ "Flow Down"
- Scope of Work
 - ▣ What is the work to be performed?
 - ▣ Plans, Specifications, Industry Standards, Building Codes
 - ▣ Identifies *what* to construct, not *how* to construct



IMPORTANT CONTRACT TERMS

- Project Cost and Payment Terms
 - ▣ What is the Contract Sum?
 - ▣ Payment
 - Progress Payments (e.g., monthly)
 - Applications for Payment, with Schedule of Value
 - Retainage
- Schedule
 - ▣ Contract Date
 - ▣ Notice to Proceed
 - ▣ Substantial Completion
 - ▣ Delays
 - Caused by Contractor? - extension not authorized.
 - Caused by Others? – reasonable extension ok.
 - Damages may be pursued by either party



IMPORTANT CONTRACT TERMS

- Changes
 - ▣ Changes to Work, Price, Schedule
 - ▣ Addenda, Change Orders, ASI, Construction Change Directives
- Who's In Charge?
 - ▣ It depends
- Bonds
 - ▣ Bid Bond
 - not required, but common
 - ▣ Performance and Payment Bonds
 - If over \$100,000, required



IMPORTANT CONTRACT TERMS

- Claims / Dispute Resolution
 - ▣ Claims
 - ▣ Mediation
 - ▣ Arbitration / Court Action
- Termination
 - ▣ For Convenience
 - Contractor entitled to compensation
 - ▣ For Cause
 - Option to Cure
 - No further obligation until work complete, and can offset amounts owed by costs to complete work



IMPORTANT CONTRACT TERMS

- Warranty
 - ▣ Typically One Year from Substantial Completion
- Damages
 - ▣ Liquidated Damages
 - ▣ Expectancy Damages (Costs to Complete)
 - ▣ Consequential Damages
 - ▣ Attorneys' Fees
 - ▣ Betterment – not allowed



IMPORTANT CONTRACT TERMS

- Indemnity
 - ▣ In general, require one party to pay losses of another party from claims of third parties.
 - ▣ Requires contractor to indemnify and defend owner for claims arising out of the contractor's work
- Insurance Procurement
 - ▣ Types of Insurance required
 - ▣ Minimum coverage amounts
 - ▣ Form of endorsements
 - ▣ Length of time coverage is to remain in place
 - ▣ Additional Insured obligation
 - ▣ Require insurance to satisfy indemnity obligations
 - ▣ Subrogation waiver



IMPORTANT CONTRACT TERMS

- Required / Prohibited Clauses
 - Performance / Payment bonds - required
 - Non-discrimination clause (race, creed, color) - required
 - Prompt Payment by Contractor to Subcontractors - required
 - Audit clause - required
 - "No Damages For Delay" Clause - prohibited
 - Restrictive Specifications - prohibited



CONSTRUCTION INSURANCE BASICS



WHAT IS BUILDER'S RISK?



WHAT & WHO DOES A BUILDER'S RISK POLICY COVER?

❖ What

- All direct physical loss or damage
- Building and materials
- Coverage extensions and sublimits

Transit

- ❖ Property offsite
- ❖ Landscaping (trees, shrubs, etc.)
- ❖ Valuable papers
- ❖ Blue prints
- ❖ Jobsite trailers

❖ Fencing



WHAT & WHO DOES A BUILDER'S RISK POLICY COVER?

Who

- > Owners
- > Contractors
- > Subcontractors of every tier
- > Developers
- > Lenders
- > Architects & Engineers



ADDITIONAL COVERAGE OPTIONS

- Hot testing
- Delay in completion
- Damage to existing property
- Contractors' wrap around coverage
- Deductible buy-down coverage



COVERAGE EXAMPLE - FIRE

Covers fire to an insured project regardless of cause



COVERAGE EXAMPLE – RIGGERS/OPERATOR ERROR

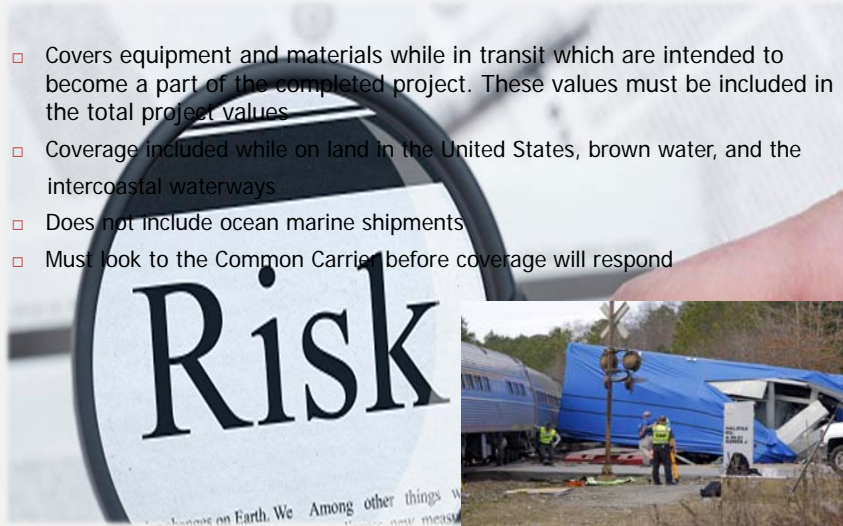
Covers a loss due to an error on the insured's part

Covers losses caused by third parties



COVERAGE EXAMPLE - TRANSIT

- Covers equipment and materials while in transit which are intended to become a part of the completed project. These values must be included in the total project values
- Coverage included while on land in the United States, brown water, and the intercoastal waterways
- Does not include ocean marine shipments
- Must look to the Common Carrier before coverage will respond



WHEN DOES COVERAGE BEGIN AND END

- Coverage begins when reported to the underwriter
- Coverage ends at the EARLIEST of:
 - Final acceptance by the owner
 - Expiry of the interest of Insured
 - Coverage is cancelled
 - Expiration date on the certificate
 - Cessation of work



HOW ARE RATES CALCULATED

- Location of the project
- Total completed values
- Occupancy type
- Construction classes (MNC/Frame, New/Remodel....)
- Contractor Experience.....
- Start & completion dates
- Hot testing and/or delay
- Deductibles
 - \$5,000,
 - \$10,000
 - \$25,000.....

WHAT IS COMMERCIAL GENERAL LIABILITY COVERAGE?

- What Risks are Covered?
 - Primary purpose is to protect from accidents causing property damage or bodily injury to a third person
 - Faulty Workmanship is not a covered risk
 - Property damage to the "Work" is not a covered risk
 - Subcontractor exception
 - Operations and Completed Operations
- Who Does CGL Coverage Protect?
 - Named Insured
 - Additional Insured

QUESTIONS



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