



James K. Ruble Seminar

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Section 20

Insuring the Building Project: Builders Risk and Installation Floater

Insuring the Building Project: Builders Risk and Installation Floater



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Challenges in Insuring a Construction Project

- Changing exposures
- Changing values
- Numerous parties involved
- Changing insurable interest

Challenges in Insuring a Construction Project

Numerous parties involved

- Project owner/developer
- Construction manager
- Architect
- Engineer
- General contractor
- Sub-contractors
- Material suppliers
- Lenders
- Others

ISO Commercial Property (CP 00 10)

Pitfalls

- Named Insured
- Property Not Covered
 - Bridges, roadways, walks, patios or other paved surfaces
 - The cost of excavations, grading, backfilling or filling
 - Foundations below the lowest basement floor or ground surface
 - Land and water
 - Retaining walls not part of a building
 - Underground pipes, flues or drains

ISO Commercial Property (CP 00 10)

Pitfalls

- **Property of Others**
 - \$2,500 automatic
 - Additional limits can be scheduled.
 - Coverage applies on premises only.
- **Property off Premises**
 - \$10,000 automatic
 - Covers property temporarily away from the premises
 - Doesn't apply to property in transit
 - No coverage for property of others

ISO Commercial Property

Pitfalls

- **Property in Transit**
 - \$5,000 included in Special Form (CP 10 30)
 - Specified perils coverage
 - Property must be in or on a motor vehicle owned, leased or operated by the Named Insured.
 - No coverage for property of others
- **Time Element Issues**
 - Will the insurer provide the necessary Soft Costs and Business Income coverage for a project in the course of construction?

ISO Commercial Property

Pitfalls

- Cause of loss issues – Special Form (CP 10 30)
 - Earth Movement – excluded
 - Water Damage/Flood – excluded
 - Collapse – limited coverage
 - No coverage for theft of building materials and supplies that are not attached to the building or structure
 - *Theft of Building Materials and Supplies (Other than Builders Risk) CP 10 44 10 12*

The Construction Contract

The American Institute of Architects (AIA)

- Founded in 1957 by 13 architects to promote architects and architecture
- Documents Committee includes design, construction, law and insurance professionals.
- 1888 – first contract was published - Uniform Contract between Owner and a Contractor
- Catalog of nearly 200 forms and contracts
- Core documents are updated every 10 years

The Construction Contract

ConsensusDOCS

- A not-for-profit coalition of national associations representing diverse interests in the design and construction industry
- Documents were first released in 2007.
- Catalog of over 100 documents

Design-Build Institute of America (DBIA)

- Advocates a delivery system that combines design and construction services
- Formed in 1993

The Construction Contract

Engineers Joint Contract Documents Committee (EJCDC)

- A joint venture of three major organizations of professional engineers
- Documents are prepared by a committee of project stakeholders including owners, contractors, funding entities, attorneys, professional liability insurers and sureties.
- EJCDC was formed in 1975, and the most recent documents were released in 2018.

Standard contracts are often modified by the user.

Others

General Considerations

- Each carrier's form is different.
- Know the needs of your customer.
- Discuss the customer's needs with your underwriter. Negotiate!
- Don't assume anything; read all forms carefully!!!

Who Can Be Covered Under BR?

- Named Insureds, Additional Insureds, Loss Payees
- Possibilities include:
 - The project owner/developer
 - The general contractor
 - All subcontractors – “subcontractors of every tier”
 - Construction manager
 - Architects and engineers
 - Material suppliers
 - The lender
 - Others
 - Many forms include numerous parties by definition.

Who Buys the BR Policy?

AIA Document A101 - 2017 Exhibit A

§A.2.3 Required Property Insurance

§A.2.3.1

...Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company...property insurance...

EJCDC® C-700 (Rev. 1) – 2013

6.05 Property Insurance

A. Builder's Risk: Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance.....

Who Must be Covered? What Does the Contract Say?

SAMPLE CONTRACT LANGUAGE

AIA Document A101 - 2017 Exhibit A

§A.2.3 Required Property Insurance

§A.2.3.1

...This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

Who Must be Covered? What Does the Contract Say?

SAMPLE CONTRACT LANGUAGE

This insurance shall include the Owner and Contractor as named insureds, and their respective members, partners, subsidiaries, affiliates, officers, directors, supervisors, staff, consultants, agents, subcontractors and employees, and any individuals or entities required by the Supplementary Conditions to be insured under such builder's risk policy, as insureds or named insureds.

Who Might Be Insured?

Sample Policy Language

If a signed construction contract requires they be included, and if the value of their work has been included in the contract value declared, the following are additional insureds:

- *The principal and/or the principal's rep*
- *Architects*
- *Consulting engineer or designer*
- *Subcontractors and sub-contractors of every tier*

Who Might Be Insured?

6. Named Insured

Any person or organization is included as a Named Insured when you have agreed in a written contract or written agreement, executed prior to loss, to name such person or organization as a Named Insured, but only to the extent of their financial interest in the Covered Property.

Any organization you newly acquire or form, other than a partnership or joint venture, of which you are the sole owner or in which you maintain the majority ownership interest, or any organization for which you are responsible for arranging insurance, but only with respect to their interest in the Covered Property, is included as a Named Insured if there is no other insurance which provides similar coverage to that organization.

However, regardless of whether listed as a Named Insured in the Common Policy Declarations or included as a Named Insured under this Paragraph, the following are not Named Insureds:

- a. Any architect, engineer or other party or entity responsible for any design, specification or plan for the fabrication, erection or completion of Covered Property with respect to loss or damage that may be caused by such fault, defect, error or omission in such design, specification or plan; or
- b. Any contractor, manufacturer or supplier of machinery, equipment or other insured property that has agreed to remedy loss or damage under a guaranty or warranty.

Whose Interests Can Be Covered?

Sample Policy Language

We cover the interest, which your subcontractors, your sub-subcontractors and your suppliers have in the Covered Property, but only while such property is situated at construction sites you have reported to us. This condition does not impair any right of subrogation we would otherwise have.

Note: These additional entities are NOT insureds. Only their interest is covered.

Advantages to Including All as Insureds

- Provides coverage to various parties with insurable interest
- All parties have rights under the policy.
- Avoids having multiple policies responding to the loss
- Compliance with contract requirements
- Minimizes litigation/subrogation between the parties

Waiver of Subrogation What does the contract say?

AIA Document A201 - 2017

§11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors.

Waiver of Subrogation What does the contract say?

AIA Document A201 - 2017 (continued)

§11.3.1

The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

Waiver of Subrogation

Good

- A Named Insured provision that includes the general contractor, all subcontractors, and others (where appropriate) as insureds
- Anti-subrogation rule - An insurer has no right of subrogation against its own insured for a claim arising from the very risk for which the insured was covered.
- Avoid ATIMA! – It can be argued that the insured doesn't have an interest in the damaged covered property if it is not work done by him. This opens the door for possible subrogation.

Waiver of Subrogation

Better

A subrogation clause allowing the insured to waive recovery rights against others in writing prior to loss

Best

A specific waiver of subrogation clause in favor of those covered by the policy and/or those protected in the contract

Waiver of Subrogation – AAIS

Subrogation Condition

If “we” pay for a loss, “we” may require “you” to assign to “us” “your” right of recovery against others. “You” must do all that is necessary to secure “our” rights. We do not pay for a loss if “you” impair this right to recover.

“You” may waive “your” right to recover from others in writing before a loss occurs.

Note: “You” means the persons organizations named as the insured on the declarations.

Waiver of Subrogation – another approach

Sample Language

We will have no rights of subrogation against:

- *any Named Insured*
- *any person or entity which is an Additional Insured under this Contract*
- *any other person or entity provided you have waived your rights of subrogation against them in writing prior to loss or damage but only to the extent of such written waiver.*

You may not waive your rights of subrogation against any common carrier or public warehouseman for hire.

Note: This form includes architects and engineers as Additional Insureds if a signed construction contract requires it.

Waiver of Subrogation – yet another approach

11. Transfer Of Rights Of Recovery Against Others To Us

If any person or organization to or for whom we make payment under this Coverage Form has rights to recover damages from another, those rights are transferred to us to the extent of our payment. That person or organization must do everything necessary to secure our rights and must do nothing after loss to impair them. But you may waive your rights against another party in writing prior to a loss under this Coverage Form.

You may waive your rights against another party after a loss under this Coverage Form only if, at time of loss, that party is one of the following:

- a. Someone insured by this insurance; or
- b. A business firm:
 - (1) Owned or controlled by you; or
 - (2) That owns or controls you; or
- c. Your tenant.

This will not restrict your insurance.

Any waiver under this Paragraph 11 to recover damages does not apply to:

- a. Any architect, engineer or other party or entity responsible for any design, specification or plan for the fabrication, erection or completion of Covered Property with respect to loss or damage that may be caused by such fault, defect, error or omission in such design, specification or plan; or
- b. Any contractor, manufacturer or supplier of machinery, equipment or other insured property that has agreed to remedy loss or damage under a guaranty or warranty.

Disadvantages to Including All as Insureds

Who gets paid in the event of a claim?

- Most policies pay “You,” the Named Insured.
 - What if there is more than one Named Insured?
- Many policies allow the insurer to adjust losses with owners of damaged property if other than “you” and pay those owners.

Who gets paid?
What does the contract say?

AIA Document A201 - 2017

§11.5 Adjustment and Settlement of Insured Loss

§11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

Note: Make sure policy language meets the contract requirements.

Disadvantages to Including All as Insureds

Can the actions of one compromise coverage for others? Is there coverage for innocent insureds who do not breach policy conditions?

- Separation of Insured condition
- Does the form include this language?
- If not, can it be added?

Sample Language

This Policy shall apply as if a separate policy had been issued to each party provided that the total liability of the insurer to all parties collectively shall not exceed the sums insured and limits and sub-limits of liability specified in the Schedule or elsewhere in the Policy or endorsed thereto.

The Project Description

- Two story building being constructed at 100 Main Street, Wall Township, NJ
- Buildings or structures at 100 Main Street, Wall Township, NJ
- Covered Property at Block 100, Lots 2,3,4, Wall Township, NJ
- Contract #ABC123

Property Generally Covered

Permanent Works

- Building or structure under construction or being renovated
- Foundations
- Sitework - excavations, grading, filling
- Materials, supplies, machinery and equipment that will become a permanent part of described project
- Property owned by the insured and property of others for which the insured is legally liable

Property Generally Covered

Temporary Works

- e.g. scaffolding, construction forms, cribbing, falsework, temporary structures, temporary fencing
- Coverage may apply only on the described premises.
- Coverage often applies with a sublimit.
- The policy may include a separate coverage and sublimit to re-erect scaffolding.

Property Covered

AAIS Form IM 7051 08 12

We" cover direct physical loss or damage caused by a covered peril to "buildings or structures" while in the course of construction, erection or fabrication.

"Buildings or structures" means:

- a) buildings;*
- b) structures;*
- c) materials and supplies that will become a permanent part of the buildings or the structures; and*
- d) foundations, excavations, grading, filling, attachments, permanent fencing, and other permanent fixtures.*

Property Covered

Sample Language

1. Covered Property, as used in the Coverage Form, means:

Property which has been installed, or is to be installed in any "commercial structure" or any one to four family dwelling, private garage or other structure that will be used to service the "commercial structure" or one to four family dwelling at the location which you have reported to us. This includes:

- a. Your property;
- b. Property of others for which you are legally responsible;
- c. Paving, curbing, fences and outdoor fixtures;
- d. Trees, shrubs, plants and lawns installed by you or on your behalf;
- e. Completed single family dwelling which is being used as a Model Home when reported to us as such on monthly reports with an amount shown; and
- f. Foundations of buildings and foundations of structures in the course of construction.

1. "Commercial structure" means any structure other than a one to four family dwelling.

Property Usually Excluded

Land and Water (There should be a sitework exception.)

Sample Language

This policy excludes:

- a. Land and land values and the value of cut fill and backfill materials existing at the project site prior to project commencement; however, to the extent included in the contract bid documents and declared for premium purposes, the value of fill and backfill materials purchased for use in the completion of the project is not excluded. Notwithstanding the foregoing, labor and material charges incurred to move, remove, place or otherwise handle cut, fill and backfill materials, whether insured or uninsured in the foregoing, are covered to the extent such charges are included in the contract bid documents and declared for premium purposes;*
- d. Water.....This exclusion does apply to loss of water contained in any process equipment, tank or pipe*

Property Usually Excluded

- Contractors' tools and equipment
- Airborne or waterborne property
- Aircraft, watercraft, motor vehicles, trailers
- Maps, blueprints, plans
- Money and securities
- Existing buildings and structures

Existing Buildings

AAIS Form IM 7051 08 12

Standing Building Or Structure --

a. "We" do not cover any:

1) standing "building or structure"; or

2) part of a standing "building or structure"

that has been wholly or partially constructed, erected, or fabricated prior to the inception of this policy.

b. "We" do not cover any standing "building or structure" in the process of rehabilitation or renovation. Rehabilitation and renovation includes, but is not limited to, any additions, alterations, improvements, or repairs to an existing "building or structure".

Existing Buildings

Sample Language

We do not cover:

a. Existing buildings or structures to which improvements, alterations, repairs or additions are being made, unless we specify otherwise in writing

b. Buildings or structures in the course of construction that are more than 30% complete prior to the inception date of this policy unless we specify otherwise in writing; or

Property That May Be Excluded

- Underground pipes, flues drains, pilings; other underground works (e.g. wiring)
- Sidewalks and other paved surfaces (sometimes covered within a certain distance of the building)
- Landscaping materials, trees, shrubs, lawns, plants (There may be a giveback, often with a sublimit and limited perils.)
- Signs

Property Away from Jobsite

- Property in Transit/Property at a Temporary Storage Location
 - Form may require that property be specifically allocated to or identified with a covered project.
 - Form may not cover property at a contractor's premises if the contractor is an insured.
 - Contractor can insure as BPP on its property policy.
 - Form may cover only the Named Insured's property.
- Sub-limits normally apply.
- Contractor may be responsible under the construction contract for insuring the property before it reaches the jobsite.

Coverage Territory

Possibilities:

- US, its territories and possessions
- Canada
- Puerto Rico
- Continental US
- Worldwide
- Other

When Does Coverage Begin?

- Policies cover property in the course of construction, erection, fabrication (language varies.)
- Consider pre-construction exposures.

When Does Coverage End?

Earliest of (common triggers)

- On expiration or cancellation date of policy
- The project has been abandoned.
 - with no intention to complete it
 - after a certain number of days of no work having been performed
- At completion of the job or within a specified number of days after completion
- Named Insured's interest in the project ends.
- Project is accepted by the purchaser.
- Project is leased or rented to others.
 - watch the pre-construction lease/rent exposure
- Building is occupied for its intended purpose.

Occupancy and Use

- When occupancy occurs, coverage ceases immediately or within a specified number of days.
- Permission to Occupy (usually for a certain number of days) can often be added by endorsement.
- The form may require that all planned fire protection and security systems are operational.
- Negotiate Permission to Occupy at the time you write the policy.

Occupancy and Use

Sample Language

This coverage is void if, without “our” prior written consent:

- 1. the building or structure described on the declarations is occupied in whole or in part; or*
- 2. the building or structure described on the declarations is put to its intended use.*

Problem?

Contract Language

Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been.....or until no person or entity other than the Owner has an insurable interest in the property....whichever is later.

The Policy Term

- Write coverage for at least as long as the expected length of the project.
- Don't count on being able to extend or renew the policy on favorable terms.
 - What if there have been claims?
 - What if market conditions have changed?
 - What will the rate look like on the extension or renewal?

Covered Causes of Loss

- Open Perils coverage is the norm.
 - Coverage for direct physical loss to covered property applies unless otherwise excluded or limited.
- Named Perils coverage is less common.
- Construction contracts commonly require "All Risk" coverage.

AIA A101 – 2017 Exhibit A

Required Property Insurance (§A.2.3.1)

Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property Insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

AIA A101 – 2017 Exhibit A

Causes of Loss (§A.2.3.1.1)

The insurance required by this section A.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials.

AIA A101 – 2017 Exhibit A

Specific Required Coverages (§A.2.3.1.2)

The insurance required by this section A.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses.

Sublimits, if any, are as follows:

.....

AIA A101 – 2017 Exhibit A

Optional Extended Property Insurance (§A.2.4)

- Loss of Use, Business Interruption, Delay in Completion
- Ordinance or Law Insurance
- Expediting Cost Insurance
- Extra Expense Insurance
- Civil Authority Insurance
- Ingress/Egress Insurance
- Soft Costs Insurance

Causes of Loss - AAIS

"We" cover risks of direct physical loss or damage unless the loss is limited or caused by a peril that is excluded.

Anti-Concurrent Causation Language

"We" do not pay for loss or damage caused directly or indirectly by, or consisting of, one or more of the following excluded causes, events, or conditions. Such loss or damage is excluded regardless of other causes, events, or conditions that contribute in any sequence to or aggravate the loss, whether such causes, events, or conditions act to produce the loss before, at the same time as, or after the excluded causes, events, or conditions.

AAIS IM 7051 08 12

Causes of Loss

Exclusions to which Anti-concurrent causation language often applies:

- Civil Authority/Governmental Action
- Earth Movement
- Flood and certain other water losses
- Fungus, Bacteria
- Nuclear Hazard
- Ordinance or Law
- War and Military Action

Causes of Loss - AAIS

"We" cover risks of direct physical loss or damage unless the loss is limited or caused by a peril that is excluded.

No Anti-Concurrent Causation Language

"We" do not pay for loss or damage that is caused by or results from one or more of the following:

AAIS IM 7051 08 12

Note: Some exclusions in both categories have ensuing loss exceptions for fire or other specified perils.

Common Exclusions Dishonest or Criminal Acts

Sample Language

Dishonest or criminal act (including theft) by you, any of your partners, members, officers, managers, employees (including temporary employees and leased workers), directors, trustees or authorized representatives, whether acting alone or in collusion with each other or with any other party; or theft by any person to whom you entrust the property for any purpose, whether acting alone or in collusion with any other party. This exclusion: (1) Applies whether or not an act occurs during your normal hours of operation; (2) Does not apply to acts of destruction by your employees (including temporary employees and leased workers) or authorized representatives

Common Exclusions Civil Authority/Governmental Action

Civil Authority

Order of any civil authority, including seizure, confiscation, destruction, or quarantine of property.

“We” do cover loss resulting from acts of destruction by the civil authority to prevent the spread of fire, unless the fire is caused by a peril excluded under this coverage.

AAIS IM 7051 08 12

Common Exclusions Damage to property in the open

Damage to property in the open by rain, ice etc.

***Rain, Snow, Ice, or Sleet** – “We” do not pay for loss or damage caused by or resulting from rain, snow, ice, or sleet to property in the open that is not part of the permanent “building or structure.”*

This exclusion does not apply to property in the custody of carriers for hire.

AAIS IM 7051 08 12

Common Exclusions

e. Other Types Of Losses

- (1) Wear and tear;
- (2) Rust or other corrosion, gradual deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;
- (3) Frost or freezing;
- (4) Settling, cracking, shrinking or expanding of walls, floors, ceilings, foundations, pilings, patios, driveways or pavements;
- (5) Nesting or infestation or discharge or release of waste products or secretions, by insects, birds, rodents or other animals.
- (6) Mechanical breakdown, including rupture or bursting caused by centrifugal force. But if mechanical breakdown results in elevator collision, we will pay for the loss or damage caused by that elevator collision.

But if a Covered Cause of Loss results, we will pay for that resulting loss or damage caused by that Covered Cause of Loss.

Paragraph (6) of this exclusion does not apply to the extent coverage is provided under the Testing Coverage Extension.

Common Exclusions Fungus

Fungus Exclusion

Except as provided under Coverage Extensions – Limited Fungus Coverage, the existence of or any activity of “fungus.”

But if “fungus” results in a “specified peril,” “we” cover loss or damage caused by that “specified peril.”

This exclusion does not apply to:

- 1. Loss that results from fire or lightning; or*
- 2. Collapse caused by hidden decay*

AAIS IM 7051 08 12

Fungus Coverage Extension

- Coverage applies if the fungus is a result of a specified peril (other than fire or lightning) or flood (if flood coverage is included.)
- Insured must have taken all reasonable steps to protect the property from additional damage at and after the occurrence
- \$15,000 aggregate limit

AAIS IM 7051 08 12

Delay In Completion And Increased Construction Costs Exclusion

- 1) "We" do not pay for loss or damage caused directly or indirectly by a:**
- a) delay in the completion of construction, erection, or fabrication of a "building or structure" or any portion of a "building or structure"; or**
 - b) a change in the sequence of construction, erection, or fabrication of a "building or structure" or any portion of a "building or structure"**
- regardless of the cause of the delay in completion or change in sequence.*
- 2) "We" also do not pay for increased construction costs caused by or resulting from a delay in completion or change in sequence as described above under items d.1), a) and b).**
- Increased construction costs include, but are not limited to:*
- a) general conditions;*
 - b) increased construction costs and additional construction expenses;*
 - c) increased overhead, increased material costs, and increased labor costs;*
 - d) soft costs; and*
 - e) loss of earnings and loss of rental income. AAIS IM 7051 08 12*

Delay In Completion And Increased Construction Costs Exclusion

3) General conditions means general conditions and extended general conditions including, but not limited to, costs of additional:

- a) utility charges;*
- b) maintenance;*
- c) facilities;*
- d) communications; and*
- e) administrative personnel.*

AAIS IM 7051 08 12

Common Exclusions Loss of Use and Consequential Loss

*“We” do not pay for loss or damage caused by or resulting from loss of use, delay, or loss of market.
“We” also do not pay for any consequential loss or damage of any nature.*

AAIS IM 7051 08 12

Common Exclusions Design Error/Faulty Work Exclusion

Sample Language

Defective, deficient or flawed workmanship or materials, or for expenses to redesign or revise flawed or defective plans or architectural designs. But we will pay for "loss" to other Covered Property that results from such defective workmanship, materials or design provided such loss or damage is not otherwise excluded in this policy.

London Engineering Group (LEG)

LEG1/1996 - Model "outright" defects exclusion

- The insurer(s) shall not be liable for: Loss or damage due to defects of material, workmanship, design, plan, or specification.

London Engineering Group (LEG)

LEG2/1996 – Model “consequences” defects exclusion

- The insurer(s) shall not be liable for: All costs rendered necessary by defects of material, workmanship, design, plan, specification and should damage occur to any portion of the Insured Property containing any of the said defects the cost of replacement or rectification which is hereby excluded is that cost which would have been incurred if replacement or rectification of the Insured Property had been put in hand immediately prior to the said damage...

London Engineering Group (LEG)

LEG3/1996 – Model “improvement” defects exclusion

- The insurer(s) shall not be liable for: All costs rendered necessary by defects of material, workmanship, design, plan, specification and should damage occur to any portion of the Insured Property containing any of the said defects the cost of replacement or rectification which is hereby excluded is that cost incurred to improve the original material workmanship design plan or specification...

Collapse Exclusions

- There may be no Collapse exclusion.
- Collapse may be excluded, with limited coverage restored in an Additional Coverage.
- Coverage may apply only if collapse is due to certain specified causes of loss.
- Is an abrupt collapse required?
- Is there coverage for property in the “State of Imminent Collapse?”

e.g. In imminent danger of abruptly falling down or caving in or that suffers a substantial impairment of structural integrity with the result being that such property cannot be occupied for its intended purpose

Collapse – Example 1

Additional Coverage – Collapse

(1) For the purpose of this Additional Coverage a. Collapse, abrupt collapse means an abrupt falling down or caving in of a building or any part of a building with the result that the building or part of the building cannot be occupied for its intended purpose.

(2) We will pay for direct physical loss or damage to Covered Property, caused by abrupt collapse of a building or any part of a building that is insured under this policy if such collapse is caused by one or more of the following:

- a) Hidden building decay...*
- b) Hidden insect or vermin damage...*
- c) Defective material or methods of construction...*
- d) [Other specified perils]*

Note: This form excludes Collapse, except as provided in the additional coverage.

Collapse – Example 2

Additional Coverage - Collapse

We will pay for direct physical loss or damage to Covered Property, caused by collapse of all or part of a building or structure insured under this Coverage Form, if the collapse is caused by one or more of the following:

- (1) Fire; lightning; windstorm; hail; explosion; smoke; aircraft; vehicles; riots; civil commotion; vandalism; breakage of glass; falling objects; weight of snow, ice or sleet; or "water damage"; but only if the causes of loss are otherwise covered in this Coverage Form;
- (2) Hidden decay;
- (3) Hidden insect or vermin damage;
- (4) Weight of people or personal property;
- (5) Weight of rain that collects on a roof;
- (6) Use of defective materials or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation.

Note: This form excludes Collapse, except as provided in the Additional Coverage.

Warranties and Guarantees Exclusion

Sample Language

This insurance does not apply to loss or damage caused by or resulting from any cause of loss or damage to the extent that such loss or damage is covered by any warranty or guarantee made by you or any contractor, subcontractor, manufacturer or supplier.

vs.

Loss or damage covered under any written or implied guarantee or warranty by any manufacturer or supplier, but only to the extent of recovery from such written or implied guarantee or warranty.

Other Common Exclusions

- War, nuclear
- Mysterious disappearance
- Voluntary parting, unauthorized transfer
- Temperature/humidity change
- Freezing (unless property is protected)
- Release of pollutants
- Latent defect/inherent vice

Earth Movement Exclusion

Sample Language

- 1) *Any earth movement (other than sinkhole collapse), such as an earthquake, landslide, mine subsidence or earth sinking, rising or shifting. But if earth movement results in fire or explosion, we will pay for the loss or damage caused by that fire or explosion.*
- 2) *Volcanic Action...*

Earth Movement – Buyback

- When buying back coverage, are you buying back all Earth Movement or just Earthquake?
- Coverage may be subject to a sublimit.
 - Will this satisfy the contract?
- Coverage may have a different deductible. (flat or percentage)
- Limit may be an aggregate limit.

Flood/Water Exclusion

Sample Language

Water

- 1) *Flood, surface water, waves, tides, tidal waves, overflow of any body of water or their spray, all whether driven by wind or not.*
- 2) *[Interior Water Intrusion] (to be discussed separately)*
- 3) *Mudslide or mudflow*
- 4) *Water that backs up or overflows from a sewer, drain or sump, except as provided in the Back-Up or Overflow of Sewers, Drains or Sumps Additional Coverage*
- 5) *Water under the ground surface pressing on, or flowing or seeping through:*
 - a) *Foundations, walls, floors or paved surfaces;*
 - b) *Basements, whether paved or not; or*
 - c) *Doors, windows or other openings.*

But if water, as described in e.(1) through e.(5) above, results in fire, explosion or sprinkler leakage, we will pay for the loss or damage caused by that fire, explosion or sprinkler leakage.

Flood/Water – Buyback

- When buying back coverage, are you buying back everything the exclusion takes away or just Flood?
- Coverage may be subject to a sublimit.
 - Will this satisfy the contract?
- Coverage may have a different deductible. (flat or percentage)
- Limit may be an aggregate limit.

Back up of Sewers and Drains Coverage

Sample Language

We will pay for loss or damage to Covered Property caused by water that backs up or overflows from a sewer, drain or sump from within the reported location.

The most we will pay under this Additional Coverage is the amount shown in the Supplemental Declarations for Back-Up Or Overflow Of Sewers, Drains Or Sumps.

No deductible applies to this Additional Coverage.

Water Intrusion – a closer look

Sample Exclusion Language

We will not pay for a loss or damage caused directly or indirectly by:

Water...

The interior of any building or structure caused by or resulting from rain, snow, sleet, ice, sand or dust, whether driven by wind or not, unless:

- (a) The building or structure first sustains damage by a Covered Cause of Loss to its roof or walls through which the rain, snow, sleet, ice, sand or dust enters; or*
- (b) The loss or damage is caused by or results from thawing of snow, sleet or ice on the building or structure*

Interior Water Intrusion Coverage

Sample Coverage Language

The Company will pay for direct physical loss or damage to covered property arising from, contributed to, or resulting from rain, snow, sleet or ice, all whether wind driven or not, entering the interior of any building(s) or structure(s) when the roof and outside walls are incomplete...The insured agrees that it will take all appropriate precautions to avoid loss or damage to covered property from rain, snow, sleet or ice, all whether wind driven or not.

Equipment Breakdown Exclusions

Coverage forms may exclude one or more of the following:

- Explosion of steam boilers, steam pipes, steam turbines or steam engines
- Artificially generated electrical, magnetic or electromagnetic energy (e.g. electrical currents, arcing)
- Mechanical breakdown, including rupture or bursting caused by centrifugal force

Resultant damage by fire or other specified perils may be covered.

Equipment Breakdown Coverage

- Can be added to some policies by endorsement
- Some forms do not exclude mechanical breakdown, artificially generated current, and explosion of steam equipment – as such, separate coverage may not be needed
- Coverage can also be purchased separately from an Equipment Breakdown insurer.

Testing Exclusion

Testing

- Loss occurring during testing of equipment is commonly excluded. Supplemental coverage may give a small amount of coverage.
- Loss by a resultant specified peril may not be excluded.
- Cold/operational/building start-up testing vs. hot testing
- Many policies exclude only hot testing.
- Hot testing coverage typically requires addition of an endorsement.

Hot Testing

Sample Definition

“Hot testing” means any start-up, commissioning or other form of testing making use of any feedstock, including operational tests and performance tests performed in conjunction with “hot testing”. “Hot testing” includes the examination, experiment or trial of Covered Property such as ovens, boilers, turbines, generators, pumps, process equipment or equipment of a similar nature to prove their ability or function. “Hot testing” does not include the start-up and testing of building systems such as sprinkler systems, plumbing, piping systems, gas lines, air conditioning lines, elevators, or escalators.

AAIS – Testing Endorsement

Example: Partial policy wording from IM 7962 01 12

TESTING ENDORSEMENT

Testing Schedule : Testing Limit:\$ _____ ; Testing Deductible Amount: \$ _____

Supplemental Coverages

1. **Coverage** – “We” cover direct physical loss to a covered “building or structure” resulting from testing.
2. **Testing Means** – Testing as used in this endorsement means start-up, performance, stress, pressure, or overload testing of materials, supplies, machinery, fixtures, and equipment that will become a permanent part of a covered “building or structure”.
3. **Testing Limit** -- The Testing Limit indicated on the Testing Schedule is the most “we” pay in any one occurrence for loss resulting from testing. However, if testing results in a “specified peril”, the most “we” will pay for any resulting loss is the “limit” indicated on the “schedule of coverages” for the covered “building or structure”.
4. **Exclusions That Still Apply** – The exclusions for Electrical Currents, Steam Boiler Explosion, and Mechanical Breakdown still apply except to the extent that coverage is provided under this endorsement.
5. **Deductible** -- “We” only pay that part of “your” testing loss over the deductible amount indicated on the Testing Schedule in any one occurrence.

Additional Perils Excluded

Testing -- Except to the extent coverage is provided under this endorsement, “we” do not pay for loss or damage caused by or resulting from testing. But if testing results in a “specified peril”, “we” do cover the loss or damage caused by that “specified peril”.

IM 7962 01 12

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Testing Exclusion

Sample Language

We will not pay for a loss or damage caused by or resulting from any of the following:

Testing, start-up, commissioning, examination or trial of Covered Property such as boilers, ovens, stoves, turbines, pumps, process equipment or equipment of a similar nature to prove their ability or function. This includes any form of testing making use of feedstock, including operational tests, performance tests, or other tests performed in conjunction with such testing. This exclusion does not apply to “electrical testing”, “mechanical testing”, “pneumatic testing” or “hydrostatic testing” used in the start-up and testing of building systems that are intended to service a building.

Common Additional Coverages

- Debris Removal
- Pollutant Clean Up and Removal
- Expediting Expenses
- Contract Penalties
- Valuable Papers
- Ordinance or Law
- Fire Protection Equipment Recharge
- Fire Department Service Charge
- Reward
- Preservation of Property/Emergency Removal
- Landscaping Materials
- Claims Data Expenses
- Green Building Coverage
- Property in Temporary Storage
- Property in Transit

Debris Removal - AAIS

- Debris removal means the costs for the demolition, clearing and removal of debris of covered property if such debris results from a covered peril.
- Does not cover costs to extract pollutants or remove or restore polluted land or water
- Expenses must be reported within 180 days of the direct physical loss.
- Sublimit (25% of amount paid for direct physical loss) + an additional \$5,000 if needed

Debris Removal - another approach

c. Debris Removal

(1) We will pay for your expense to remove:

- (a) Debris of Covered Property; and
- (b) Other debris that is at a job site described in the Builders' Risk Declarations or at a temporary storage location, if a Limit of Insurance is shown in the Builders' Risk Declarations for Temporary Storage;

caused by or resulting from a Covered Cause of Loss that occurs during the "project period". However, coverage under paragraph (b) above does not apply to costs to remove any property that is included under Section A.2. Property And Costs Not Covered.

The amount we will pay includes the increased costs you incur to divert debris of Covered Property to recycling facilities rather than landfills. Any income or remuneration derived from this recycling will reduce the amount of debris removal expense we would have otherwise paid.

The expenses will be paid only if they are reported to us in writing within 180 days of the date of the loss.

(2) The most we will pay under this Additional Coverage is 25% of:

- (a) The amount we pay for direct physical loss of or damage to Covered Property; plus
- (b) The deductible in this Coverage Form applicable to that loss or damage.

Except as provided in (3) below, payment under this Additional Coverage is included within and will not increase the applicable Limit of Insurance shown in the Builders' Risk Declarations.

Note: (3) below provides an additional limit of Debris Removal coverage

Debris Removal (Tropicana Claim - Policy Language)

Debris Removal

.....in the event of direct physical loss or damage insured hereunder and occurring during the policy period, the Company will pay the following necessary and reasonable costs:

- (1) costs to remove debris being an insured part of the property from the project location of the insured; and/or*
- (2) costs of cleanup, at the project location of the insured, made necessary as a result of such direct physical loss or damage.*

The sublimit was 25% of the amount of insured physical loss or damage.

Zurich Am. Ins. Co. v. Keating Bldg. Corp
513 F. Supp. 2d 55 (2007)

Court Ruled:

Debris removal costs were limited to the costs of removing debris from the property and transporting it away from the project site. Demolition costs and other costs related to the demolition were not subject to the sublimit.

Debris removal costs did not include forensic debris removal costs associated with the investigation into the cause of the collapse.

Result: Change in Debris Removal language in AAIS and many other carrier forms. The older language is still in some forms.

Common Additional Coverages

Pollutant Clean Up and Removal

- Pays expenses, subject to a sublimit, to extract pollutants from land or water at the project site if the discharge or release of pollutants results from a covered cause of loss

Expediting Expenses

- Pays expenses incurred, subject to a sublimit, to get a project back on schedule after a covered loss
- Typically includes costs to expedite the repair or reconstruction of covered property

Common Additional Coverages Extra Expense and Expediting Expense

Sample Language

In the event of direct physical loss of or damage to Covered Property caused by or resulting from a Covered Cause of Loss, we will pay for the reasonable and necessary:

- 1) Extra expenses you incur to return the work on the part of Covered Property sustaining such loss or damage to the completion schedule actually in place immediately prior to the covered loss or damage.*
- 2) Expediting charges, including overtime, night work, work on public holidays, express and air freight, and the extra cost of rental construction equipment, you incur solely to expedite repair or replacement of the Covered Property sustaining such loss or damage.*

Common Additional Coverages

Contract Penalties

- A limited amount of coverage applies to contract penalties the insured contractor is required to pay as a direct result of a covered loss to the property.

Valuable Papers

- A limited amount of coverage applies to the costs to research, restore or replace blueprints or other construction documents. Coverage may apply to electronic data.

Common Additional Coverages Ordinance or Law

Sample Language

g. Ordinance Or Law

(1) In the event of covered direct physical loss of or damage to a building or structure that is Covered Property, the following coverages apply, but only with respect to that lost or damaged building or structure:

(a) Coverage A – Loss To The Undamaged Portion Of The Building or Structure

We will pay under Coverage A for the loss in value of the undamaged portion of the building or structure as a consequence of enforcement of an ordinance or law that requires demolition of undamaged parts of the same building or structure.

Any payment under Coverage A is included within and does not increase the Limit of Insurance applicable to the covered building or structure.

(b) Coverage B – Demolition Cost

We will pay under Coverage B the cost to demolish the building or structure and clear the site of undamaged parts of the same building or structure, as a consequence of enforcement of an ordinance or law that requires demolition of such building or structure.

(c) Coverage C – Increased Cost Of Construction

We will pay under Coverage C the increased cost to:

(i) Repair or reconstruct damaged portions of that building or structure; or

(ii) Reconstruct or remodel undamaged portions of that building or structure, whether or not demolition is required;

when the increased cost is a consequence of enforcement of the minimum requirements of the ordinance or law.

Ordinance or Law Coverage Considerations

- Does coverage apply to ordinances or laws in effect at the time of the loss or when the insured applies for a building permit?
- Does a dollar limit apply to Coverage A – Loss to the Undamaged Portion of the Building?
- What dollar limits apply to Coverage B – Demolition Cost and Coverage C – Increased Cost of Construction?
- If Delay in Completion Coverage is added, does Ordinance or Law coverage apply to that as well? If so, for how long?

Sample Language

If applicable under the policy or endorsements thereto, the increase in the Delay In Completion coverage loss insured hereunder arising out of the additional time required to comply with the requirements of said ordinance or law. Such additional time will not exceed thirty (30) consecutive days.

Common Additional Coverages

Fire Protection Equipment Recharge

- Covers the cost, up to the limit for this coverage, to refill fire protective systems discharged to control a covered cause of loss. Some forms respond in the event of an accidental discharge.

Fire Department Service Charge

- Covers the insured's liability, up to the limit for this coverage, assumed by contract or agreement prior to the loss, for fire department services charges
- Charges must relate to covered property and be incurred to save or protect covered property from a covered cause of loss.

Common Additional Coverages

Reward

- Reimburses the insured, up to a specified amount, for rewards paid for information leading to the conviction of one responsible for a covered cause of loss and/or recovery of stolen property
- May be limited to certain causes of loss (e.g. arson, theft, vandalism)

Preservation of Property/Emergency Removal

- Coverage applies on an "all risk" basis for a specified number of days if property is being moved or stored to prevent loss by a covered peril

Preservation of Property +

Extension of Coverage - Removal

We will pay for:

- *Any direct physical loss or damage to contract works while it is being moved to or while stored at another location for up to 180 days; or*
- *The cost to remove contract works from the premises;*

if you must move the contract works from the premises to preserve it from loss or damage caused by or resulting from a peril not otherwise excluded.

Common Additional Coverages

Landscaping Materials (trees, shrubs, plants, lawn)

- There is often a sublimit per item.
- There is often a sublimit per occurrence.
- Coverage may apply only at the project site.
- Coverage may apply to specified perils only.
- Coverage typically doesn't apply to loss by disease, lack of moisture, freezing, weight of ice or snow.
- Wind or hail may be excluded.

Common Additional Coverages Claims/Loss data preparation expenses

Sample Language

J. Professional Fees

- 1) *We will pay the reasonable expenses you incur in preparing claim data when we require it to adjust a covered loss. This includes the cost of taking inventories, making appraisals and preparing other documentation to show the extent of loss.*
- 2) *We will not pay for:*
 - a) *Any expenses incurred, directed, or billed by or payable to lawyers, insurance adjusters or public adjusters, or their associates or subsidiaries;*
 - b) *Any costs as provided in Loss Condition F.2. (Appraisal); or*

...

Common Additional Coverages Green Building Coverage

- **Indoor Air Quality**
Costs to reestablish indoor air quality in accordance with applicable standards
- **Recycling Debris**
Costs to separate debris that is recyclable and to divert it to a recycling facility

Common Additional Coverages Green Building Coverage

- **Recertification Costs**
Costs to have building recertified according to applicable standards

- **Electricity or Water Replacement**
Costs to purchase water or electricity from a public utility as a result of damage to renewable energy generating or water conservation equipment

Valuation

- **Replacement Cost, not to exceed the amount actually spent to repair, replace, rebuild**
 - Construction contracts often require RC.

- **Actual Cash Value at the time of loss**
 - Deduction for physical depreciation

- **100% coinsurance commonly applies**
 - Coinsurance basis is typically the completed value of the construction had no loss occurred.

- **Coinsurance can often be waived**

Replacement Cost

Sample Language

Replacement Cost is the cost to replace Covered Property at the time of loss or damage without deduction for depreciation.

- 1) You may make a claim for loss or damage covered by this insurance on an actual cash value basis instead of on a replacement cost basis. In the event you elect to have loss or damage settled on an actual cash value basis, you may still make a claim on a replacement cost basis if you notify us of your intent to do so within 180 days after the loss or damage.
- 2) We will not pay on a replacement cost basis for any loss or damage:
 - a) Until the lost or damaged property is actually repaired or replaced; and
 - b) Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage

Replacement Cost

Alternate Sample Language

Replacement Cost Means

- 1) the necessary and reasonable costs of materials and labor incurred to repair or replace, without deduction for depreciation, the part of the covered property that sustains direct physical loss or damage;
- 2) the reasonable overhead and profit related to the covered property that sustains direct physical loss or damage but not to exceed the overhead and profit being charged for the construction, erection, or fabrication of a covered "building or structure" in accordance with the construction contracts; and
- 3) other related construction costs and expenses that are re-incurred to repair or replace the part of the covered property that sustains direct physical loss or damage but only if such costs have been included as part of the "limit" for a covered "building or structure".

Architect and Engineer Fees

Forms treat these fees differently - options:

- Automatically covered as part of the replacement cost
- Included as an additional coverage with a sublimit
- Included as soft costs in an endorsement

Setting Limits

Consider:

- Change orders
- Costs of labor and/or material may increase
- Cost of any temporary works covered by the policy and included in the limit

Some carriers offer enhancements or endorsements that increase the limit by a certain dollar amount or percentage to account for changes in construction specifications and labor or material cost increases.

Limits

- Jobsite limit
- Catastrophe/Occurrence Limit
- Property in transit limit
- Temporary storage location limit
- Sublimits for various coverages
 - Be careful here. Check the construction contract which doesn't typically allow for sublimits.

Deductible

- Usually a flat amount per occurrence
- Percentage deductibles are sometimes used.
 - Percentage of what? Limit, Loss Amount, Value at time of loss
- Separate deductibles may apply for flood, earthquake, wind or theft losses
- Policy conditions may state that the Named Insured is responsible for the deductible. Policy may be silent.
- The construction contract should address who is responsible.

§A.2.3.1.4 Deductibles and Self-Insured Retentions. If the insurance required by this Section A.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

AIA Document A101 – 2017 Exhibit A

Warranties

- A warranty is a condition that forms part of the policy. The insured guarantees that something shall be done or shall not be done during the term of the policy.
- If a warranty is breached, there is no coverage.
- Most Builders Risk forms don't have a Separation of Insureds Condition.

The Time Element Side of Things

Delay in Completion/Delay in Opening

Delay in Completion Coverage

- Coverage trigger – A delay in the project’s completion caused by damage by a covered peril
- Written for the benefit of the project owner
- Limits are separate from the hard costs limits
 - Hard costs are the costs to repair or replace damaged property.
- A time deductible/waiting period typically applies.

Soft Costs (accounting)

- A construction industry accounting term
- Expenses that aren’t a direct construction cost (not labor and materials)
- Also known as G&A (General & Administrative)
- Soft costs typically make up about 30% of the construction cost.

Soft Costs (accounting)

Includes items such as:

- Architectural and design fees
- Inspection fees
- Land and real estate costs
- Construction equipment, rental and tools
- Loan interest and accounting fees
- Project management
- Construction insurance and professional dues
- Local and state taxes
- Advertising and promotion
- Additional works and studies

Soft Costs Coverage

- Necessary and/or reasonable expenses that would not have been incurred except for a delay in the project
- The delay must be caused by damage to the project by a covered peril.
- What is covered as soft costs varies among policy forms, with most forms covering only specifically described soft costs.
- Limits can apply separately to each type of covered soft cost or on a blanket basis.
- Recovery during any 30 day period may be limited.

Soft Cost Schedule - AAIS

Example	
AAIS IM 8015 01 12 Page 1 of 1	POLICY NUMBER
<p>SOFT COST SCHEDULE SINGLE JOBSITE – BUILDERS' RISK</p> <p>(The entries required to complete this schedule will be shown below or on the "schedule of coverages".)</p>	
Loc. No.	JOBSITE
_____	_____
_____	_____
ADDITIONAL SOFT COSTS	"LIMITS"
The most "we" pay for soft cost expenses in any 30 day period is:	\$ _____
The most "we" pay in any one occurrence for soft cost expenses is:	\$ _____

Soft Costs Coverage

Sample Language

We will pay the actual "soft costs" arising out of the "delay period" to the extent such expenses are actually and necessarily incurred by you to enable you to begin your operations in the manner originally planned. The "soft costs" must be incurred during the "delay period" and such "delay period" must be caused by or result from direct physical loss or damage by a Covered Cause of Loss:

- 1) *at or within 100 feet of the premises shown in the Declarations; or*
- 2) *While in transit*

This Additional Coverage applies only at those premises for which a Limit of Insurance for "Soft Costs" is shown in the declarations, unless otherwise stated.

Soft Costs Coverage

Sample Language

“Soft Costs” means reasonable expenditures which are necessarily incurred during the “delay period” that would not have been incurred by you if the “delay period” had not occurred, consisting of the following:

(list of covered soft costs follows)

Soft Costs – Commonly Covered Expenses

- Additional interest on construction loans, refinancing fees
- Advertising and promotional expenses
- Additional real estate taxes for the extended construction period
- Additional commissions from re-negotiations of leases and other contracts
- Additional design fees (e.g. architect/engineers/consultants)

Soft Costs – Commonly Covered Expenses

- Additional professional fees (e.g. legal/accounting)
- Fees for licenses and permits
- Additional insurance premiums
- Project administration expenses (e.g. additional office space, clerical, security)
- Many insurers are open to covering other soft costs if asked. Talk to the insured!

Loss of Revenue

Rental Income

- Projected loss of rental earnings

Loss of Business Income

- Projected loss of other income

Actual loss sustained, subject to policy limit, approach is common

- Valued policies are less common

Additional Coverages Civil Authority

Sample Language

We will also pay for “soft costs” when the delay in the completion date of the project is caused by the action of a civil authority that prohibits access to the Covered Property due to direct physical loss or damage to property away from the location you have reported to us, but only if such loss or damage is caused by or resulting from a Covered Cause of Loss. This coverage is extended for a period of three (3) consecutive weeks from the date of that action. However, this does not increase the “soft costs” Limit of Insurance.

Additional Coverages Expense to Reduce/Mitigate Loss

Sample Language

We will also pay any necessary expenses you incur that actually mitigate your “soft costs” (except expenses for which there is coverage elsewhere in this Coverage Form). We will pay for such expenses to the extent that they do not exceed the “soft costs” that otherwise would have been payable under this Coverage Form.

Additional Coverages Expense to Reduce/Mitigate Loss

Alternate Language

The Company shall also indemnify the Named Insured for expenditures that are necessarily incurred for the purpose of reducing any loss amount under this extension, but only to the extent that such loss amount otherwise payable under this extension is thereby reduced.*

*Soft Costs/Rental Income/Gross Earnings

Period of Indemnity/Delay Period

Start Date: Anticipated completion date of the project had the builders risk loss not occurred

- The construction contract may be used to determine the date.
- This date may be shown in the policy.
- Multiple dates may apply if the project will be done in phases.
- A waiting period typically applies to each delay.

Period of Indemnity/Delay Period

End Date: Forms vary. Possibilities include:

- The date when the property at the location you have reported to use should be repaired, rebuilt or replaced with reasonable speed and like kind and quality
- The actual date on which commercial operations or use and occupancy can commence with the exercise of due diligence and dispatch
- The earlier of 12 months or when construction is actually completed
- A number of days as stated in the policy

Area of Concern

Projected Completion Date:	June 1, 2020
Date of Fire:	March 1, 2020
Actual Completion Date:	September 1, 2020

- The period of indemnity begins at the anticipated completion date (after the waiting period.)
- Additional expenses incurred between March 1 and June 1 are not incurred during the period of indemnity.
- Expense to Reduce Loss Coverage may help in this case.

Additional Exclusions

- Interference by strikers
- Suspension, lapse or cancellation of leases and contracts
- Unavailability of funds
- Unavailability of subcontractors
- Improvements to correct deficiencies in the original designs or construction
- Additional time to repair property as a result of adverse weather conditions
- Consequential losses

The Renovation/Rehabilitation Project

Option #1

Insure existing structure and new work under a Commercial Property Policy (e.g. CP 00 10)

Earlier mentioned pitfalls:

- Limited Named Insureds
- Property Not Covered
- Limited Property off Premises
- Limited Property in Transit
- Cause of Loss Issues

The Renovation/Rehabilitation Project

Option #1

What about vacancy?

After 60 days, there is no coverage for loss by:

- Vandalism
- Sprinkler leakage (unless the system has been protected against freezing)
- Building glass breakage
- Water damage
- Theft
- Attempted theft

Payment for any other covered cause is reduced by 15%.

Buildings under construction or renovation are not considered vacant.

The Renovation/Rehabilitation Project

Option #2

Insure existing structure and new work under a Builders Risk Policy.

- Existing structure coverage usually requires an endorsement.
- Valuation of existing structure is usually ACV.
 - Does the contract require RC?
- May need Permission to Occupy

The Renovation /Rehabilitation Project

Option #3

Insure the existing structure under a Property Policy, and the new work under a Builders Risk Policy.

- Claims settlement could be difficult, especially if different carriers are involved.
- The nature of the project could make this difficult (gut/rehab vs. adding a horizontal addition)
- **CP 14 20 Additional Property Not Covered** – Add to the property coverage to specify what is not be covered there.

Installation Floater

Why does a contractor need an Installation Floater?

- Pitfalls in Commercial Property Policy
 - Limited coverage for property off premises
 - Limited coverage for property in transit
- Builders Risk may not apply to all projects.
- Builders Risk may be inadequate.
- To satisfy contract requirements

Builders Risk and Installation Floater

Other Insurance Clauses

Sample Installation Floater Language

If you have other insurance against loss or damage covered by this policy, we shall not pay any amount greater than the proportion that the applicable limit of Insurance shown in the Declarations bears to the total applicable limits of insurance covering the loss or damage.

Builders Risk and Installation Floater

Other Insurance Clauses

Sample Installation Floater Language

If there is another policy covering the same loss, other than that described above [another policy subject to the same terms as this policy,] “we” pay only for the amount of covered loss in excess of the amount due from that other policy, whether “you” can collect on it or not. But “we” do not pay more than the applicable “limit.”

Who is an Insured

- The contractor shown as the Named Insured
- Some forms expand coverage to include others.

Sample Language

If you are a contractor and are required by a signed construction contract to insure project works against physical loss or damage for your benefit and for the benefit of

- *The principal and/or the principal’s representative(s) or any architect, consulting engineer or designer...[they] are an Additional Insured..*
- *Your subcontractors and sub-subcontractors of every tier...[they] are Additional Insureds*

Property Generally Covered

- The insured's materials, machinery and equipment which will become a permanent part of the project
- Property of others which will become a permanent part of the project
 - This property may be covered only at the project site

Property Generally Covered

- Property of Others
 - property of others in the insured's care, custody, or control
 - property for which the insured is liable
 - property of others for which the insured has assumed liability prior to loss

AAIS

“We” cover direct physical loss or damage caused by a covered peril to:

- a. “your” materials, supplies, fixtures, machinery or equipment; and*
- b. similar property of others that is in “your” care, custody, or control*

while at “your” jobsite and that “you” are installing, constructing or rigging as part of an “installation project”

AAIS IM 7100 08 10

AAIS

“Installation project” means an installation or construction project including, but not limited to, a repair or maintenance project that involves the installation, construction, or rigging of materials, supplies, fixtures, machinery, or equipment.

AAIS IM 7100 08 10

Property Often Not Covered

- Property on a premises owned, leased or operated by the insured
 - May be covered if allocated to a particular project
- Money and securities
- Contractors machinery, tools and equipment
- Waterborne property
- Airborne property
- Trees, shrubs, plants and lawns

Where is Property Covered?

- At a jobsite
- At temporary storage locations
 - Can the contractor's own premises be a temporary storage location?
 - Can a manufacturer's or supplier's premises be a temporary storage location?
 - Limit may be lower than the jobsite limit.
- In transit
 - Limit may be lower than the jobsite limit.

When Does Coverage End?

Possible triggers

Earliest of:

- On expiration or cancellation date of policy
- The project has been abandoned
- Property is put to its intended use
- At completion of the job or within a specified number of days after completion
- Insured's interest in the property ends
- Property is accepted by the purchaser

Covered Causes of Loss

- Open Perils coverage is the norm.
 - Coverage for direct physical loss to covered property applies unless otherwise excluded or limited.
 - Exclusions are similar to those in Builders Risk
- Named Perils coverage is less common.

Rigging in the Installation Floater

- Some policies are silent.
- Some policies exclude loss resulting from the weight of the load exceeding the required lifting capacity of the equipment used.
- Some policies exclude property that is airborne or waterborne.
- If the Installation Floater does cover rigging, it likely covers only direct damage.

Other Rigging Solutions

Add coverage to the CGL by amending the exclusion for damage to personal property in the care, custody or control of the insured.

- There must be legal liability for coverage to apply.
- No coverage for property in transit
- Is the equipment used in the rigging operation an “auto” or an “aircraft?”
- Valuation of liability claims is typically ACV.
- Losses will erode the aggregate limits.

Rigger’s Liability Coverage Form

Rigger's Liability Endorsement to Installation Floater

A. Rigger's Liability Coverage Extension

The Optional Coverages, Additional Coverages and Coverage Extensions of the Installation Coverage Form do not apply to this Rigger's Liability Coverage Extension.

This insurance is extended to cover your legal liability for property of others in your care, custody or control for the purpose of rigging operations, up to the applicable Limit of Insurance for "loss" due to a Covered Cause of Loss. Rigging operations means rigging, hoisting, loading and unloading, assembling, dismantling, skidding and erection of Covered Property, including incidental transit, as described in the Schedule under Additional Coverage(s).

RIGGERS LIABILITY EXTENSION ENDORSEMENT

COMMERCIAL GENERAL LIABILITY INSURANCE

SECTION I – COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE
LIABILITY is amended as follows:

2. Exclusions J., Damage to Property, subparagraphs (4) and (5) do not apply to "Property Damage" to the property of others in the Named Insured's care, custody or control but only while being raised, lowered or moved by the use of "mobile equipment" that is owned or used by, or rented or leased to the Named Insured.

Coverage afforded by this Endorsement does not apply to:

- a. Loss, damage, or expense caused by, or resulting from, wear and tear, mechanical breakdown, inherent vice, latent defect or gradual deterioration.
 - b. Loss, damage or expense caused by, or resulting from dishonesty of the Named Insured's employees or of persons to whom the property may be entrusted; or loss, damage or expense caused by the dishonesty of any attendant or attendants.
 - c. Unexplained loss, mysterious disappearance, or shortage disclosed upon taking inventory.
 - d. Voluntary parting with any property by you or anyone else to whom you have entrusted the property if induced to do so by any fraudulent scheme, trick, devise or false pretense.
2. The liability of the company afforded under this endorsement for "property damage" shall not exceed the limits specified below:

Rigging Liability Coverage Form

Sample Language

We will pay all sums that you become legally obligated to pay as damages because of property damage to personal property of others in your care, custody or control to which this insurance applies.

This insurance applies only to property damage:

- 1. That occurs during the policy period; and*
- 2. That is caused by an accident while you lift, lower or move the personal property of others; and*
- 3. That results from an accident occurring at a location described on the Declarations Page*

Note: This insurance does not apply to property damage arising out of a contract or agreement.

Rigging Liability Coverage Form

Additional Coverage

When an accident causes property damage to personal property of others being lifted, lowered or moved by you, we will, subject to the Loss of Use Limit shown on the Declarations Page, pay all sums you become legally obligated to pay for loss of use of such property. The coverage provided is subject to all other conditions of this policy.

Valuation

- Actual Cash Value at the time of loss
- Replacement Cost, not to exceed the amount actually spent to repair, replace, rebuild
- Coinsurance commonly applies.

Replacement Cost

If covered property is repaired, replaced, or rebuilt, the value of covered property will be based on the reasonable and necessary costs and expenses “you” incur to repair, replace, or rebuild the covered property with materials of like kind and quality. The reasonable and necessary costs and expenses may include material, labor, reasonable overhead and profit, and delivery charges.

vs.

Lost or damaged covered property will be valued at the full cost to repair or replace it at the time of loss or damage, including customs duties incurred, but not more than you actually spend to repair or replace the covered property at the same or another location for the same use. There is no deduction for physical deterioration, depreciation, obsolescence or depletion.

Approaches to Writing Installation

Individual Project

- Individual policy for each project
- Coverage is restricted to the named project
- Insure for 100% of the project value

Approaches to Writing Installation

Reporting Form

- One policy covers all reported work.
- Premium basis can be gross receipts, contract price or values at risk at a specific time.
- There is automatic coverage for new jobs if the reporting conditions are met.

Coinsurance

What is the coinsurance basis? Some possibilities:

- The full actual cash value of all covered property
- 100% of the total completed value at the largest insured installation site in progress on the date of loss
- Specified percentage of the value of the Covered Property at the time and location of the loss
- Something else

Common Additional Coverages (similar to Builders Risk)

- Debris Removal
- Pollutant Clean Up and Removal
- Expediting Expenses
- Contract Penalties
- Valuable Papers
- Ordinance or Law
- Fire Protection Equipment Recharge
- Fire Department Service Charge
- Reward
- Preservation of Property/Emergency Removal
- Landscaping Materials
- Claims Data Expenses
- Green Building Coverage
- Property in Temporary Storage
- Property in Transit

Additional Coverage
Contract Penalties

Sample Language

If your construction contract contains a clause that requires you to pay a penalty as a direct result of loss or damage to Covered Property from a Covered Cause of Loss, we will pay that penalty.

The most we will pay under this Coverage Extension is \$25,000 unless otherwise stated in the Special Provisions section in the Declarations.

Possible Additional Coverage
Cost Escalation

Sample Language (continued)

In the event of a total "loss" that exhausts the Limit of Insurance applicable to the site of your "installation operations" where the total "loss" occurs, we will pay up to an additional 5% of that Limit of Insurance, not to exceed \$100,000 in any one occurrence, to cover any increase in the cost of labor or materials.

Such costs must result from direct physical "loss" to Covered Property caused by or resulting from a Covered Cause of Loss at a site of your "installation operations" and will only be payable if no Coinsurance penalty is applicable to the "loss".

Possible Additional Coverage Soft Costs

Sample Language

- 1) *If a limit of Insurance is shown as applicable in the Schedule, we will pay the actual and necessary "Soft Costs" you incur during the "period of restoration" as a result of a delay in the completion of your "installation operations". The delay must be caused by direct physical "loss" to Covered Property at a site of your "installation operations" caused by or resulting from a Covered Cause of Loss. This Optional Coverage only applies at a site of your "installation operations" for which a Limit of Insurance for "Soft Costs" is shown in the Schedule.*
- 2) *We will pay the necessary expenses you incur to reduce the amount of "Soft Costs" payable under this Optional Coverage. We will pay such expenses only to the extent that they do not exceed the amount that otherwise would have been payable under this "Soft Costs" Coverage....*

Possible Additional Coverage Soft Costs

Sample Language (continued)

- "Soft Costs" means:**
- a. *Additional interest expense on money you borrowed to finance "installation operations";*
 - b. *Additional real estate and property taxes;*
 - c. *Additional advertising and promotional fees;*
 - d. *Additional legal and accounting costs and fees;*
 - e. *Additional commissions, fees and administrative expenses for the renegotiation of leases;*
 - f. *Additional engineering, architect and consultant fees;*
 - g. *Additional building inspection fees and charges;*
 - h. *Additional administrative expenses;*
 - i. *Any other additional fees, charges or expenses added to this Optional Coverage by endorsement*

Possible Additional Coverage Temporary Project Works

Sample Language

Scaffolding erection costs (but not scaffolding), formwork, falsework and temporary structures necessary for the completion of the installation project provided their full cost is charge to the project and included in the contract value declared to us.

Temporary project works does not mean...contractors' or subcontractors' equipment, machinery and tools, trailers, materials and supplies of a similar nature.....

Insuring the Building Project: Builders Risk and Installation Floater

Thank You for Joining Us