


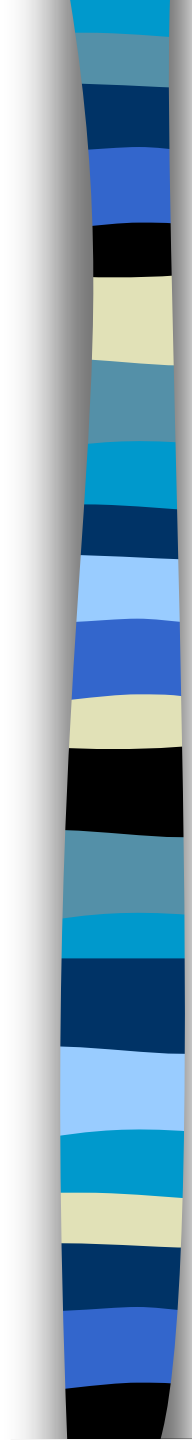
# Construction Liability: Handling Disputes & Getting Coverage



Risk and Insurance  
Management Society

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When you build a new house, you must place a guard-rail (parapet) around your roof. Do not allow a dangerous situation to remain in your house, since someone can fall from [an unenclosed roof and bring blood upon thy house].

Deuteronomy 22:8



# Three Critical Factors

□ Contract

□ Contract

□ Contract



# A Thought ...

There are only two reasons why people hire  
attorneys -  
Greed and Fear



# AIA Standard Contract Forms

- Developed by a committee of the American Institute of Architects (AIA) with representatives of the Associated General Contractors of America (AGC).
- Who is missing?



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The Owner



# AIA Standard Contract Forms

- Owner/Architect Agreement (B141)
- Owner/Contractor Agreement (A101/A107)
- General Conditions (A201)

These standard forms were last changed in 1997, with possible update in 2007



# General Conditions (A201)

## □ Reduced Indemnification language

- Elimination of an indemnification for the Owner's Loss of Use Damages.
- The old form provided for the contractor to indemnify if only partially responsible, new form is only to the extent of contractor's own responsibility in causing the loss.





## General Conditions (A201)

- Added Indemnity provided to Contractor and Architect relating to Hazardous Materials encountered on the site. (10.3)
- Added Waiver of Consequential Damages for both the Owner and Contractor.



# General Conditions (A201)

## Article 11 INSURANCE AND BONDS

11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business . . . .



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11.1.2 The insurance required by Subparagraph 11.1.1 shall be written for not less than the limits of liability specified in the Contract Documents or required by law, whichever coverage is greater.

Coverages, whether written on an occurrence or claims-made basis, shall be maintained...until date of final payment...



# General Conditions (A201)

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Who controls Occurrence versus Claims Made?

Who is protected under the insurance policy?

*11.2.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.*



# General Conditions (A201)

## Suggestions:

- ❑ Owner, its lenders, employees, agents, consultants, and any government entities as required by permit/license agreements be named as additional insureds.
- ❑ Coverage should be primary/non-contributory, including in the event of partial occupancy.
- ❑ Coverage should be on an occurrence basis.
- ❑ Lengthen required cancellation clause to 60 or 90 days.
- ❑ Payment of any deductibles does not constitute a reimbursable cost.
- ❑ Extended Completed Operations Coverage





# General Conditions (A201)

11.4.1 Unless otherwise provided, the Owner shall purchase and maintain...property insurance written on a builder's risk "all-risk" or equivalent policy form...

Such insurance shall be maintained, unless otherwise provided in the Contract Documents. . . . Until no person or entity other than the Owner has an insurable interest...

11.4.1.1 . . . And shall include, without limitation, insurance against the perils of fire. . . collapse, earthquake, flood, windstorm. . .



# General Conditions (A201)

11.4.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

11.4.1.5 Partial occupancy . . . Shall not commence until the insurance company or companies providing property insurance coverage have consented . . .

11.4.3 The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against the loss of use of the Owner's property . . . however caused



# General Conditions (A201)

## Note:

It is common for the Contractor to provide the Builders Risk coverage. All references to this coverage, deductibles, Boiler & Machinery coverage, and Loss of Use must be changed, not just the Property subparagraph.



# General Conditions (A201)

## Note:

Delay coverage is not typically included in contractor-provided insurance. It must be pre-negotiated.

Project delay is typically the most uninsured exposure, yet it may be the most expensive.



# Audience Questions - 1

- Difference in Conditions (DIC) Builders Risk
  - What does it add in coverage?
  - Is it necessary coverage?



# Audience Questions - 2

- Majority of our contractors carry Builders Risk insurance
  - Do we need additional protection during the construction phase?



# Audience Questions - 3

- How do I respond to the Care, Custody and Control exclusion in the GC's CGL for a renovation project?



# Conclusion

Most construction claims arise over fees, project delays, or property damage. To the extent that coverage can be construed under the property/builders risk insurance policy, a quicker, more amicable settlement may be possible - without having to point fingers and prove negligence.

And remember . . .





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