

Construction Contracts: Builders Risk Trends, Changes and Underwriting Implications

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Presentation Goals

1. Understand how BR fits into risk matrix
2. Identify model contracts in use
3. BR insurance requirements: Trends/Changes
4. Disconnects: Contracts vs. BR policies
5. Discuss: BR implications/Underwriting issues

Setting the Stage

1. Where do risks belong?
2. Review main BR coverage principles
3. Core philosophies of presenters

Where do risks belong?

Business Risk

- Project not built as agreed
- Correcting defects
- Not fit for purpose
- Wear and tear / deterioration, etc.
- Construction delays
- Insolvency

Liability Insurance

- Professional Indemnity (architects, engineers etc.)
- Performance Bond
- Manufacturer's Warranty
- CGL – BI and PD
- Pollution Liability
- Workers compensation

Builders Risk Insurance

- All risks of physical damage
- Nat Cat / Fire
- Resultant damage from defects and other perils
- Soft costs
- Delay/revenue loss

Main BR Principles



BR Philosophies

1. BR is the backbone of construction insurance
2. BR policy should comply minimally with “contract documents”
3. BR is first stop after accidental project damage
4. BR insulates other insurance (e.g., CIPs)

Sources of Minimum BR Requirements

1. Model construction contracts
2. Custom construction contracts

Model Construction Contracts

1. AIA A201 and A101 (2017)
2. ConsensusDocs 200 (2017)
3. EJCDC C700 (2018)
4. DBIA 535 (2010)

(*See handout)

Model Construction Contracts (cont.)


Poll Question:

As part of the Builders Risk underwriting process, do you review the construction contract prior to quoting a project?

<https://api.cvent.com/polling/v1/api/polls/spjh5jhk>



BR Contract Requirements- Trends

1. Procurement: Owner  Contractor
 - 2010- Owner responsible with all versions
 - 2018- Owner- AIA, DBIA
Contractor- ConsensusDocs, EJCDC
2. Broader perils (e.g., LEG 2 and 3, earth movement, terrorism)

BR Contract Requirements- Trends

3. Who is protected

- 2010- “Interests. . . in the project” (AIA)
 - “Named Insureds” (ConsensusDocs)
 - “Loss Payees” (EJCDC)
 - “Additional Insureds” (DBIA)
- 2018- “Insureds” or “Named Insureds”

4. Full limits Sublimits permitted

BR Requirements- Recent Changes

1. Coverage on existing buildings


- AIA, ConsensusDocs, EJCDC

2. Naming of Insureds

- EJCDC no longer requires engineers
- ConsensusDocs continues to require material suppliers and design professionals
- DBIA continues to require design consultants

BR Requirements- Recent Changes

3. Coverage duration

- Final Completion  Substantial Completion
(with caveats)- AIA, ConsensusDocs, EJCDC
- DBIA requires until Final Completion

4. Resultant Damage- Faulty design, workmanship and materials

- AIA, ConsensusDocs, EJCDC
- DBIA is silent

BR Implications-Underwriting Issues

1. Can all BR insurance requirements be met?
2. Key areas to consider: Who, what, where, when and how?

BR Implications-Underwriting Issues

Who?

1. Named Insureds vs. Additional Insureds
2. Material/Equipment Suppliers
(ConsensusDocs)
3. Owner lacking (ConsensusDocs)

BR Implications-Underwriting Issues (cont.)

Who?

4. Design Professionals (ConsensusDocs)
5. Design Builder and Design Consultants (DBIA)
6. Controlled Insurance Programs

BR Implications-Underwriting Issues (cont.)

Who?

Poll Question:

Does any insured have a right to present a claim under a Builders Risk policy?

BR Implications-Underwriting Issues (cont.)

What?

1. Existing Property

- AIA- required when there is remodeling or an addition (via Property or BR policy)
- ConsensusDocs- required when work is within or attached to existing property (via BR policy)
- EJCDC- owner must provide property insurance on existing property consistent with BR

BR Implications-Underwriting Issues (cont.)

What?

2. Off-site and in transit

- AIA- No longer required (optional)
- EJCDC- Not required at manufacturers and suppliers locations
- DBIA- Owner must agree to off-site storage

BR Implications-Underwriting Issues (cont.)

What?

3. Contractors Equipment

- Not required by model contracts; but be prepared to respond to requests to insure key equipment (tower cranes, lifts, etc.)
- Project owners desire to trigger soft costs/delay coverages

BR Implications-Underwriting Issues (cont.)

What?

4. Insuring “Work” (defined in const. contract)
 - Land improvements
 - Access roads, beaches, drainage systems, wells, etc.
 - Foundations and underground property

5. “Property Insured”

BR Implications-Underwriting Issues (cont.)

Where?

1. “Insured Project”
 - How site specific? How to describe in BR policy?
 - Lay down areas, batch plants, etc.
2. “Policy Territory”
3. Off-site and in transit

BR Implications-Underwriting Issues (cont.)

When?

1. When does coverage end?
 - Varies by BR policy
 - Commonly in conflict with contract requirements
 - Substantial completion vs. final payment
 - Phased completion projects

BR Implications-Underwriting Issues (cont.)

When?

2. Occupancy provisions
3. Transitioning to permanent property insurance

BR Implications-Underwriting Issues (cont.)

How?

1. Coverage extensions and sublimits
2. Increased demand for LEG 2 and 3
3. Subrogation
 - Recent trend: some BR forms do not allow waivers involving design team members

BR Implications-Underwriting Issues (cont.)

How?

Poll Question:

Do you allow waivers of subrogation in favor of professional liability for design team members?

BR Implications-Underwriting Issues (cont.)

How?

5. Boiler and machinery vs. testing
6. “Soft costs” definition
7. Restricting delay coverages to owner/lenders

Questions



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