

WHO WANTS TO SAVE A MILLION BUCKS?

Presented by

**R. Gregg Roberts, ERM
Chairman & CEO
International Institute for
Environmental Risk Management**

**Susan G. Staff, ERM
Risk Manager—Industrial
H.B. Zachry Company**

In the format of America's most popular game show, this interactive and highly educational session will help contractors and their insurance representatives identify ways to protect the corporate assets. Through a series of "games," their audience will learn how to avoid unintentional assumption of risks and how to match the insurance coverage to the risks assumed, as well as a variety of strategies for mitigating risk on large-scale construction projects. As the market hardens and underwriting scrutiny rises, contractors will learn where to focus their negotiations and how to use effective contract risk management to minimize the cost of comprehensive insurance.

Tuesday, October 30, 1:30-3:00 and 3:30-5:00 p.m.



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R. Gregg Roberts, ERM
Chairman & CEO
International Institute for
Environmental Risk Management

Mr. Roberts is a presenter for Tuesday's Workshop F, "Who Wants To Save a Million Bucks?" He is the founder of the International Institute for Environmental Risk Management (I²ERM) in association with Southwest Texas State University. The firm provides specialized services in the areas of environmental law, medicine, insurance, risk management, and technology.

I²ERM also provides nationally recognized and accredited professional curricula to the environmental industry. In addition, I²ERM developed the first comprehensive online interactive resource, environmentalriskmanager.com, which provides information, knowledge, consulting, and solutions for environmental decision-makers.

Mr. Roberts is the founder, chairman, and course director of the Environmental Risk Management (ERM) program, a professional designation curriculum of the Texas State University System at Southwest Texas State University, where he is program faculty, adjunct professor of Environmental Risk Management, Division of Continuing Education. The professional curriculum has provided training and certification to numerous underwriters from AIG, Chubb, and Liberty Mutual. In addition, many brokers from Aon, Marsh, Willis, and others have attended.

He also serves on the board of the Institute of Environmental and Industrial Science. He is a national and international speaker in the area of environmental risk management and has served on various governmental task forces with respect to environmental risk management and insurance, including a White House Conference panel on Sustainable Environmental Technologies under former Vice President Al Gore. He is also the former chairman of the Advisory Board of the National Brownfield Association.

Prior to I²ERM, Mr. Roberts served for 7 years as the director of Aon Environmental Risk Services after creating the division. Environmental Risk Services was the worldwide environmental resource group for all of the Aon companies. Prior to his tenure at Aon, he was senior vice president and director of the Environmental Resource Group, Construction Services Division, for another global insurance brokerage and consulting firm. During his time in the brokerage business, he designed, marketed, and managed over \$1.2 billion in premiums. Before spending 14 years in the brokerage and consulting arena for global companies, he spent 12 years as the director of Risk Management, Environmental Health and Safety, for a midsized engineering and construction company with domestic and foreign operations.

Mr. Roberts graduated from Southwest Texas State University with a BBA in management and economics. He continued his environmental education through various EPA and OSHA licensing programs, as well as receiving certifications through programs at Texas A&M, Georgia Tech, and Southwest Texas State University.

Susan G. Staff, ERM
Risk Manager—Industrial
H.B. Zachry Company

Ms. Staff is a presenter for Tuesday's Workshop F, "Who Wants To Save a Million Bucks?" She currently serves as risk manager for the San-Antonio-based H.B. Zachry Company's Industrial Group Division. Through its various divisions, H.B. Zachry Company is one of the largest contractors worldwide, providing construction and construction management services for infrastructure projects such as highways, dams, and airports; power plant development and construction; and plant maintenance and capital improvements for the utilities, pulp and paper, and petrochemical industries.

Ms. Staff is responsible for all aspects of project risk management for the company's Industrial Group Division. Her duties include reviewing and negotiating contract provisions regarding risk allocation and insurance, providing project risk management and insurance premium indications, procuring and negotiating project insurance policies with insurance industry professionals, and developing and evaluating subcontract documents and qualification criteria. Other activities with H.B. Zachry have included serving as the leader of the first Zachry Home Office Safety Team and serving on the company's Subcontracting Task Team.

Prior to joining H.B. Zachry, Ms. Staff served as risk manager-projects for the Power Generation Segment of Asea Brown Boveri, Inc., in Windsor, Connecticut, and as manager, corporate insurance, for Rust International, Inc., in Birmingham, Alabama.

She is currently a member of the Risk and Insurance Management Society and has served in a voluntary capacity both locally on chapter boards and nationally on several committees for the Society. Ms. Staff has made presentations in the areas of contractual risk transfer, additional insured, and subcontract risk management at regional and national RIMS conferences as well as the IRMI Construction Risk Conference.

Ms. Staff earned a bachelor's degree in business administration from the University of Georgia, where she majored in risk management and insurance. She recently earned certification as environmental risk manager from the International Institute of Environmental Risk Management.

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QUESTIONS/ANSWERS AND COMMENTS

Game 1

1. Which of the following types of insurance is a standard coverage carried by almost all contractors?
 - A. Errors & omissions insurance
 - B. Commercial general liability insurance**
 - C. Pollution liability insurance
 - D. Alien abduction insurance

Commercial general liability insurance is the insurance that covers the insured's legal liability for third-party bodily injury and property damage claims. This policy also provides, as part of the standard form, contractual liability, premises operations, and products/completed operations coverage. Errors & omissions insurance is typically provided by the party performing the design and/or engineering. Although some contractors and specialty subcontractors do carry pollution liability insurance, it is not yet considered a standard coverage. Contractors may have limited coverage for certain pollution losses under their CGL policies. There is, however, a growing awareness in the construction community of environmental risks stemming from nonenvironmental construction work and, as a result, the purchase of contractor's pollution liability insurance is becoming increasingly common.

2. Which of the following is NOT a "typical" builder's risk policy exclusion?
 - A. Damage to existing property
 - B. Damage to property stored off-site**
 - C. Faulty workmanship or design error
 - D. Mechanical breakdown

Other typical exclusions where coverage may be provided by manuscript policy wording, endorsements, and/or extra premium are: earthquake, flood, boiler explosion, and hot testing. Excluded property in a builder's risk policy includes automobiles, contractor's tools and equipment, and accounts, currency, etc. The cost of making good faulty workmanship or design errors is a typical exclusion; however, resultant damage from such faulty workmanship or design error may be covered.

3. When evaluating the contractual risks of performing work as a subcontractor, which of the following should be of primary concern as respects the general contractor's contract with the project owner?
- A. The contract provisions of the prime contract that "flow down" to the subcontractor**
 - B. General contractor's liquidated damages
 - C. Whether the prime contract is on a lump-sum or cost-reimbursable basis
 - D. Payment terms between the general contractor and the project owner

The prime contract between the general contractor and the project owner typically includes provisions addressing risk exposures that may or may not "flow down" to the subcontractor. Examples are limitations of liability; property damage waivers; indemnification provisions, waivers of consequential damages; and insurance requirements.

4. Which of the following substances, when present at elevated levels, would pose the most immediate threat to human health?
- A. Asbestos
 - B. Organic vapors
 - C. Radon
 - D. Methane**

Of the substances listed, methane poses the most immediate threat to human health. Methane is a colorless, odorless gas that could ignite, explode, and/or overcome the individual from inhalation in a short period of time. All other substances listed, while harmful, involve a latency period from the time of exposure to the manifestation of a health condition.

5. While driving a truck furnished by a customer, a contractor is involved in a collision with a van full of lawyers' children. Both the contractor and the customer are sued. If the contractor was contractually required to provide evidence of auto liability insurance, which policy would be primary for this loss?
- A. The contractor's policy
 - B. The customer's policy**
 - C. The policies would share the loss pro rata
 - D. Both policies expressly exclude claims for injury to an attorney

This is a tricky one! Unlike in commercial general liability insurance, primary coverage under automobile liability insurance follows the ownership of the vehicle rather than the operator of the vehicle. This is known as the "Omnibus Clause." The fact that the contractor was required to provide insurance for its liability is irrelevant in determining which policy would pay first.

As a side issue, the same answer would apply to a company employee using his or her own vehicle for company business. The employee's personal automobile liability insurance would apply on a primary basis to his or her employer's commercial automobile liability policy.

6. Assuming losses are unchanged, which of the following would result in a decrease in a contractor's experience modification rating?

- A. **An increase in expected loss rates for the applicable workers comp code**
- B. Subcontracting a higher percentage of its work
- C. Buying an engineering firm
- D. Being purchased by a corporation of diverse business interests

EMRs are calculated by comparing an insured's actual workers compensation losses with expected losses. Expected losses are calculated using an insured's audited workers compensation payrolls multiplied by the applicable WC code expected loss rate. Keeping losses constant, an EMR will decrease as expected losses increase. Therefore, this would result in a decrease in the EMR in A. above. The increase in expected losses is due to an increase in the expected loss rates. In B, while subcontracting work will result in lower losses, it will also result in lower expected losses and may in fact result in a higher EMR. Subcontractors' loss experience is NOT included in a contractor's EMR calculation, so typically the contractor's loss experience will improve if the majority of the work is performed by subcontractors.

However, even with an improvement in the contractor's loss experience, the expected losses would decrease due to a decrease in the contractor's payroll and could potentially result in an increase in the contractor's EMR. In C. above, even though the total WC payroll would increase, the EMR may increase or decrease, depending on whether expected losses increase or decrease, as illustrated below. When a contractor is acquired by another firm, as in D. above, its loss experience is combined with all of the entities under common ownership for experience rating purposes. The effect on the EMR may go either way, depending on the actual losses and expected losses of the other entities owned by the new parent company, as illustrated below.

| | Changes in Variables | WC Payroll (000's) (P/R) | Avg. Exp. Loss Rate (ELR) | Expected Losses (EL) | Actual Losses (AL) | Est. EMR |
|-----------|-----------------------------|---------------------------------|----------------------------------|-----------------------------|---------------------------|-----------------|
| | | \$30,000 | 12% | \$3,600 | \$2,500 | .70 |
| A. | ELR↑, EL↑ | \$30,000 | 15% | \$4,500 | \$2,500 | .56 |
| B. | P/R↓,ELR↓,EL↓, AL↓ | \$20,000 | 8% | \$1,600 | \$1,500 | .94 |
| C., ex. 1 | P/R↑ ,ELR↓, EL↑ | \$60,000 | 8% | \$4,200 | \$2,500 | .60 |
| C., ex. 2 | P/R↑,ELR↓,EL↓ | \$80,000 | 4% | \$3,200 | \$2,500 | .79 |
| D., ex. 1 | P/R↑,ELR↓, EL↑, AL↑ | \$90,000 | 9% | \$8,100 | \$4,500 | .56 |
| D., ex. 2 | P/R↑,ELR↓,EL↓, AL↑ | \$120,000 | 6% | \$7,200 | \$6,000 | .84 |

Game 2

1. Approximately what percent of known chemical substances are toxic?

- A. 1%
- B. 5%
- C. 37%
- D. 100%**

One hundred percent of known chemical substances are toxic at some level of exposure. Some individuals are more susceptible than others to what might be considered acceptable exposure levels due to variations in metabolism and other factors. That is why you can comply with the environmental standards and still have a health risk and claims.

2. OCIP stands for which of the following?

- A. Owners Cannot Install Properly
- B. Operations and Construction Insurance Policy
- C. Owner Controlled Insurance Program**
- D. Official Contractor's Insurance Policy

An owner controlled insurance program is a project-specific insurance program whereby the project owner purchases insurance covering the contractor and subcontractors. The owner procures the policies and pays the premiums. The coverage is typically written on a "loss sensitive" basis; i.e., the ultimate cost of the insurance is directly related to losses/claims under the policy that are paid by the owner. These programs are utilized by the owner in an attempt to achieve significant savings on insurance costs related to the project in that the contractor excludes the cost of insurance from their price. Some of the drawbacks to contractors are that the policies may not be as broad as the contractor's corporate insurance program, and OCIPs force the contractor to deal with insurance carriers and claims adjusters that they are not familiar with. In addition, the contractor loses control over the claims settlement process. OCIPs generally provide workers compensation, general liability, excess liability, and builder's risk insurance coverages.

3. Which of these is NOT considered a force majeure event?

- A. Acts of God
- B. Rework**
- C. Owner-caused delays
- D. Governmental interference

Force majeure clauses provide contractual relief to a contractor from schedule obligations; i.e., delays caused by certain events. The intent is to provide relief from those events that may be due to circumstances/reasons beyond the contractor's reasonable control. The need to perform rework would not be considered out of the contractor's reasonable control and therefore would not be considered a force majeure event.

4. State environmental laws:
- A. Can always be more stringent than federal environmental laws**
 - B. Can never be more stringent than federal environmental laws
 - C. Can always conflict with other state environmental laws
 - D. Can never conflict with other state environmental laws

State laws can always be more stringent than federal laws. There are a number of reasons for this: there are certain specific environmental impact areas that may require a different standard of care, lower MCLs and action levels of various substances, and varying geographic, geologic, and human health risk issues. For example, in California the acceptable level of lead in soil is half of the federal level; this is established by the DTSC.***

***Maximum Contaminant Level (MCL):** The maximum level of certain contaminants permitted in drinking water supplied by a public water system as set by EPA under the federal Safe Drinking Water Act.

****DTSC:** Department of Toxic Substance Control

5. On design-build projects, how can the prime contractor protect itself from professional liability claims when the engineering is performed by another party?
- A. Require a release and indemnity agreement from the owner for any liability related to professional engineering/design services
 - B. Purchase project-specific professional liability insurance
 - C. Require that the engineer fully indemnify ZCC for any claims that arise out of professional services related to the project
 - D. Both B. and C. are correct**

Since the project is an EPC project, engineering services are included in the prime contractor's scope and therefore the contractor cannot expect the owner to provide a release from professional liability. Purchasing a project-specific E&O policy is an alternative; however, such a policy would add extra cost to the project and can impact the contractor's competitiveness from a pricing standpoint. While it may be prudent to require the engineer to maintain E&O insurance, a preferred source of protection is to require the engineer to provide the contractor with a hold harmless and indemnity.

6. Which type of insurance program typically yields the highest cost savings for a contractor when losses are aggressively controlled?
- A. Retrospectively rated**
 - B. Deductible
 - C. Guaranteed cost
 - D. Owner controlled insurance program

A retrospectively rated insurance program typically yields the highest cost savings for a contractor, as the total cost of the program decreases with decreases in both claims frequency and severity. Controlling losses with a deductible insurance program typically does not reduce fixed insurance premiums, but offers cost savings as respects total costs paid within the deductible. Its cost-

effectiveness is primarily attributable to reductions in claims frequency rather than severity. A guaranteed cost program is a fixed insurance cost program with low or no deductibles and the premium is not affected at all by controlling losses. Under owner controlled insurance programs, it is typically the owner who benefits from loss mitigation, although some OCIPs do include monetary incentives to the contractor related to safety/loss control, and in the long run loss control under OCIPs provides benefit to the contractor, as the contractor's losses under OCIPs are included in their experience modification rating calculations.

Game 3

1. The term EMR refers to:
 - A. Environmental Management Response
 - B. Experience Modification Rate**
 - C. Engineer's Mechanical Risk
 - D. Ethiopian Monkey Rebellion

EMR stands for experience modification rate, also referred to as an experience modifier. It is a factor used to adjust an insured's workers compensation premium prospectively to reflect its past loss experience. The factor is based on the insured's past loss experience and modifies the manual premium. A credit modification (less than 1.0) reflects better than average experience, while a debit modification reflects worse than average experience. Although it is not the best indicator of the effectiveness of a contractor's safety program, many owners and/or contractors hiring subcontractors look at the EMR as one of the indications of safety when making a decision on which contractors to hire for a job.

2. DIC refers to:
 - A. Difference in Conditions**
 - B. Delay Insurance Coverage
 - C. Designated Insurance Consultant
 - D. Difficult Insurance Consultants

Difference in conditions builder's risk insurance is a policy that is purchased to provide "gap" coverage when another party is providing the primary builder's risk insurance. It provides coverage (subject to the policy terms, conditions, and exclusions) for physical loss or damage to the work that may be excluded under the primary builder's risk coverage. The cost for DIC coverage is typically about 50 percent of full builder's risk coverage.

3. Which of the following regulations imposes liability on "persons in charge," operator, or transporters of hazardous waste at construction sites?
 - A. Clean Water Act
 - B. Clean Air Act
 - C. CERCLA**
 - D. Toxic Substance Control Act

CERCLA imposes various types of liability on those who own contaminated sites, those who operate them, those who dispose of contaminants, etc. Liability may be strict, joint and several, and retroactive.

4. The term LCF refers to:

- A. Loss Control Frequency
- B. Limited Claims Fund
- C. Leveraged Cost Finance

D. Loss Conversion Factor

Under retrospective rating plans, loss adjustment expenses are not included in the expense charge of the basic premium because they represent a variable cost that is linked closely to incurred losses. The loss conversion factor (LCF) is a percentage factor that is applied to losses to compensate the insurer for unallocated claims and adjustment expenses associated with the losses. The LCF is generally a negotiable factor (within certain boundaries) in the retro. An inverse relationship is maintained between the LCF and the basic premium factor so contractors must consider the total impact on the retro formula in selecting a given LCF. Contractors with low expected losses can negotiate a higher LCF in exchange for a lower basic premium factor. If incurred losses are in fact low, the cost of the program has been reduced by shifting expenses out of a fixed cost component and tying them to a variable one. Tying more of the expense factor to losses results in an even greater incentive for the contractor to control losses. If incurred losses are higher than expected, however, the final premium may be higher than it would have been if more of the expenses had been built into the fixed basic premium factor.

5. When Party A agrees to be responsible for costs incurred by Party B, Party A is known as:

- A. The indemnitee
- B. The claimant
- C. The indemnitor**
- D. The terminator

An indemnification agreement is an agreement whereby one party, the indemnitor, agrees to hold harmless, defend, and indemnify another party, the indemnitee, for claims for the indemnitees tort, or legal liability. There are three basic types of indemnity agreements, and many hybrids of these three types. A comparative negligence indemnity is one where the degree of the indemnification obligation of the indemnitor is proportional to the extent of the indemnitor's negligence. A limited indemnity agreement is one in which the indemnification obligations include joint or concurrent negligence. For example, if the indemnitee is 90 percent negligence and the indemnitor is 10 percent negligence, the indemnitor must provide 100 percent indemnity. Finally, a broad form indemnity is one in which the indemnitor agrees to indemnify the indemnitee even for claims for which the indemnitee may be solely negligent. There are many states that prohibit broad form indemnity agreements, which are often referred to as anti-indemnity statutes.

6. What item below best describes the difference between a remedy and a poison?

- A. The dose of a substance**
- B. The application of the remedy
- C. The time of the remedy
- D. The type of exposure

Too large an amount of any substance will change that substance from a remedy, or treatment, to a poison or toxicant. This is known as a dose-response relationship.

Game 4

1. Which of the following is not considered a method of alternative risk financing?
 - A. Captive insurance companies
 - B. Risk retention groups
 - C. Risk purchasing groups
 - D. Assigned risk pool**

Alternative risk financing (ARF) programs are risk management programs used as an optional alternative to traditional insurance programs. These are programs under which the insureds are largely self-insured or subject to high retention levels. The assigned risk pool is used by insureds with poor loss experience who are unable to purchase workers compensation through the normal insurance market channels. These insureds are placed into the applicable state assigned risk pool or plan and are assigned to one of several insurance companies who are required by the state to accept nonpreferred risks.

2. During a critical lift, a contractor damages the owner's existing plant. The owner's property insurer pays for the damage, but sues the contractor to recover the amount paid. Which of the following policy provisions would protect the contractor against the insurer's claim?
 - A. Waiver of subrogation**
 - B. Limitation of liability
 - C. The "Stupid Is As Stupid Does" clause
 - D. Insurance limits

A waiver of subrogation is a contract provision that prohibits one party's insurer from bringing an action against the other party to recover a loss paid by the insurer. Waivers of damages may also be included in contract provisions between the contractor and owner, which are outside of the insurance waiver of subrogation. If there is a waiver of subrogation by the insurer, but no contractual provision for waiver of damages by the owner against the contractor, the contractor may still assume the risk of the owner claiming recovery directly against the contractor for such damages. For the contractor to have full protection against claims for damage to the owner's property, the contract should have both contractual waivers between the parties as well as require waivers of subrogation by the owner's insurers.

3. Your worker improperly installs a faulty beam, which falls and damages a turbine that you are installing. Which of the following will your builder's risk insurance policy cover?
 - A. Repairing and reinstalling the beam
 - B. Repairing the turbine**
 - C. Both A and B
 - D. Neither A nor B

Builder's risk insurance policies contain an exclusion for the "Cost of Making Good" faulty workmanship and/or design errors but the resulting damage from such faulty workmanship or design error is covered. In the above example, the cost of replacing the faulty beam would NOT be covered, but the resulting damage, the damage to the turbine, would be covered. (It is helpful to note that the scope of this exclusion varies greatly from policy to policy, which is why it is essential that the contractor have the right to review any builder's risk policies which may be provided by the project owner.)

4. For which of the following can a contractor can be designated a potentially responsible party (PRP) under CERCLA?
- A. Accidentally knocking over a job site Port-A-Potty
 - B. Transporting toxins to an approved waste disposal site**
 - C. Employee exposed to a customer's spill of hazardous substances
 - D. Excessive methane gas release following the annual chili and beans cookoff

A company's exposure to environmental risk goes well beyond liability for bodily injury and/or property damage resulting from the release or spill of hazardous substances. There are many environmental regulations with regard to hazardous substances. One in particular is CERCLA, which places financial liability and responsibility on parties generating, transporting, storing, and disposing of hazardous substances.

The fact that substances are being transported to an approved site is irrelevant. *An entity who is determined to be a PRP will be legally responsible for cleanup of the pollutant and/or contaminant, which can run into millions of dollars. One example of where a contractor was found to be a PRP is a case where a contractor was hired to build a park for a municipality. The contractor was digging up dirt and hauling it away. It was later found that the dirt was contaminated and even though the contractor had no knowledge of the contamination, the contractor was found to be a "generator" of hazardous waste and determined to be a PRP.*

5. A to Z Construction Company is operating a crane rented from D. Fective Equipment Company. The crane unexpectedly topples over, causing \$150,000 in damage to the crane. The rental agreement states that A to Z is responsible for any damage to the crane during the rental period. Which of the following policies might respond to the damage?
- A. A to Z's builder's risk policy
 - B. A to Z's CGL policy
 - C. D. Fective's permanent property policy

D. A to Z's contractor's equipment policy

Although D. Fective probably carries insurance on the crane, it would not be insured under the company's permanent property policy, but under an equipment floater or equipment policy. Because the contract specifies that A to Z has the risk of loss, they would not only be responsible for the deductible under D. Fective's insurance, but the insurer may also subrogate against A to Z for costs and expenses incurred in settling the claim.

A to Z will not have coverage under its builder's risk policy because builder's risk insurance typically covers only those materials and equipment that are destined for incorporation into the work, and specifically excludes any of the contractor's equipment or materials used in the construction of the project. Likewise, A to Z's CGL would not respond due to the exclusion for damage to property in the insured's care, custody, or control. The only place A to Z might have coverage is under its contractor's equipment policy, and then only if the policy has been endorsed to cover equipment rented by the insured.

6. Which of the following injuries would typically NOT be covered under basic workers compensation coverage?
- A. A clerk suffers a paper cut
 - B. Site manager injured while driving a customer to lunch
 - C. A broken arm suffered in a fall from a ship-channel loading dock**
 - D. An injury sustained when a worker fails to tie off when working from a scaffold

Basic workers compensation coverage provides medical expenses and lost-time wages to employees who are injured in the scope of their employment. The benefits are paid according to state WC benefit schedules. There are certain types of job-related injuries that may be subject to federal acts, for which such coverage must specifically be endorsed to the workers compensation policy. Injured employees working in, above, and in direct proximity to U.S. navigable waters may be entitled to benefits under the United States Longshore and Harbor Workers Act (USL&H) in lieu of the state WC benefits. These benefits are typically two to three times higher than standard state WC benefits, and therefore the rates charged for this insurance can be double or triple the state WC rates. Note: As respects D. above, there are some states that exclude from coverage work-related injuries sustained in connection with a violation of a safety regulation.

Game 5

1. DSU refers to:
- A. Design Services Underwriters
 - B. Direct Steam Unit
 - C. Delaware State University
 - D. Delay in Start-Up**

DSU refers to delay in start-up insurance. This insurance is usually purchased as an endorsement to the project builder's risk insurance and provides coverage for costs related to delay of a project where the delay is directly attributable to physical loss or damage to the work covered under the project builder's risk insurance coverage. Costs covered are typically for loss of revenues, debt service repayment, projected gross profits, and other costs referred to as "soft costs."

2. Which of the following is NOT a risk retention technique?
- A. Deductibles
 - B. Guaranteed cost insurance**
 - C. Self-insurance
 - D. Captive insurance companies

A guaranteed cost insurance program is one in which a set premium is paid for risk transfer insurance coverage with either a very low or no deductible. The premium is not affected by losses. This type of program is advantageous particularly during soft insurance markets, when premiums are

low. The disadvantages are that the insured does not have control over the claims process, and there is little or no incentive for loss/cost control.

Risk retention programs offer the benefits of affording the insured control over the claims process, provide safety/loss control incentive, and the cost of the coverage decreases with reductions in claims.

3. Under which of the following conditions would a contractor not have an exposure for damage to the work?

A. Contract contains a full release from the owner for damage to the work

- B. Owner provides the builder's risk insurance on a project
C. Both A and B
D. Neither A nor B

Owners often provide the builder's risk insurance on a project. Usually, the contractor is contractually obligated to repair and/or replace any damage to the work and retains risk of loss to the work. An owner's builder's risk policy may not provide as broad coverage to the contractor as the contractor would be able to provide and often carries higher deductibles than a contractor would carry. Therefore, a contractor should include in its pricing the cost of a DIC builder's risk policy. However, if the contractor does not have any contractual risk for loss or damage to the work then the contractor may exclude all costs related to builder's risk insurance.

4. If a site has undergone a regulatory supervised remedial action plan (RAP), when is the remediation considered complete?

A. When the regulatory agency requires no further action

- B. When contaminants are below the MCL (Maximum Contaminant Level)/Action Level
C. When no contaminants remain
D. When the insurance company gives approval

The remediation is not complete until the regulatory agency has issued an "NFA"—No Further Action—letter. Contaminants may remain but at a regulatory accepted level. In some cases, if the regulatory standards change or the operational use of the site changes, additional cleanup may be required later. The NFA does not provide protection from other third-party claims for BI/PD, cleanup liability to others, etc.

5. A standard form CGL insurance policy covers which of the following kinds of liability?

- A. Surveying errors
B. Gradual releases of pollutants
C. Paternity suits against employees
D. Damage to a sub's work arising out of the sub's work

Commercial general liability policies contain exclusions related to releases of pollutants and contaminants, and claims where the cause of the injury or damage is related to professional services. Also, there must be an occurrence of bodily injury and/or property damage to trigger this coverage, which negates answer C.

Currently, the standard CGL covers damage to a sub's work arising out of that, or another, sub's work. This is commonly referred to in insurance circles as broad form property damage coverage. However, the 2001 ISO CGL revisions include endorsements that may substantially restrict or eliminate this coverage. Contractors face a serious coverage gap when these endorsements are attached; therefore they should resist attempts by insurers to use them. If unavoidable, the contractor should demand a corresponding decrease in its premium.

6. While performing maintenance services at a customer's power plant, you accidentally rupture a pipe, which causes the customer's plant to shut down for 3 days. Which of the following best protects you from a claim by the customer for lost revenues resulting from the shutdown?
- A. Commercial general liability insurance
 - B. Contract limitation of liability
 - C. Waiver of consequential damages**
 - D. Force majeure provision

The waiver of consequential damages clause protects against "indirect and incidental" claims against you by your customer, such as loss of use of their facility, lost revenues and/or profits, etc. Indirect and incidental damages are so subjective and virtually impossible to quantify and present a catastrophic risk.

Game 6

1. BI-PD refers to:
- A. Business Interruption—Pollution Damage
 - B. Bodily Injury—Property Damage**
 - C. Bad Insurance—Payment Doubtful
 - D. Business Insurance—Premium Deductible

In contract requirements and insurance policies, the insurance policy limits for automobile liability insurance and commercial general liability insurance refer to coverage limits on a per-occurrence basis for bodily injury liability and/or property damage liability.

2. A wrap-up insurance program, or OCIP, usually does NOT include which of the following coverages?
- A. Workers compensation
 - B. General liability
 - C. Umbrella liability
 - D. Automobile liability**

A wrap-up typically provides these coverages for all contractors doing work at a specified job. The insurance program is paid for by the job owner (OCIP), or in some cases the general contractor (CCIP)—if the general contractor is the initiator of the program. Wrap-up coverages typically include builder's risk insurance, workers compensation insurance, and general liability insurance. Auto liability and contractors equipment are not typically included. Coverages sometimes provided by the wrap-up, depending on the type of project, include professional liability insurance and pollution liability insurance. (The latter is sometimes called a "dirty wrap-up.")

The workers compensation and general liability coverage are usually written on a loss sensitive rating plan such as a large deductible or retrospective rating plan.

3. Private indemnification agreements:
 - A. Are not binding after the project is completed
 - B. Transfer CERCLA and RCRA liability
 - C. Allocate legal liability for damages
 - D. Transfer the obligation to pay damages**

*Private indemnification agreements only allocate and transfer economic liability (which party will pay) for damages. Parties cannot contractually transfer their actual legal liability, and attempts to do so are not recognized by the regulatory agencies. **Do not confuse with government indemnity, which is recognized by the agencies.***

4. Which of the following contract provisions does NOT place a boundary on the contractor's liability to the owner?
 - A. Specified amount limitation of liability
 - B. Contract insurance requirements**
 - C. Waiver of consequential damages
 - D. Specified rate liquidated damages provision

The insurance requirements in a contract spell out the types of coverages and policy limits that a contractor is required to maintain and carry on a project. The limits are merely set as the minimum amount of insurance that the customer is willing to accept. The limits do not limit the contractor's liability for several reasons. First, this insurance covers the contractor's legal liability for claims by third parties who are not a party to our contract and whose claims may exceed the required insurance limits. For example, the contractor may only be required to maintain \$1 million of CGL coverage, but a subcontractor's injured employee may sue the contractor and the claims settlement may exceed the \$1 million. Secondly, there is usually a specific clause in our contracts that specifically states that the insurance coverages and limits shall in no way limit the contractor's liability otherwise imposed in the contract. For example, if there is no specific dollar limit on the contractor's indemnity obligation in the contract, then the contractor is contractually obligated to fully indemnify the owner, regardless of what limits of insurance are required to be maintained in the contract.

5. You agree to indemnify a customer for third-party bodily injury and property damage claims resulting from your work to the extent of your negligence. Which of the following is covered by your contractual liability insurance?
- A. **A lawsuit against your customer stemming from a work-related injury to your worker.**
 - B. The customer's plant manager runs away with the wife of one of your employees and the employee sues your customer.
 - C. Because of a construction accident, your customer incurs OSHA fines or penalties.
 - D. A lawsuit against your customer by an employee injured as a result of your customer's operations.

Contractual liability: This type of coverage is the most often utilized in the construction industry. It provides the type of coverage for claims against a party for which the insured may be responsible by virtue of contractual agreement. The contractor agrees to accept another party's legal or tort liability under a written agreement. The hold harmless/indemnity agreement is the contract language that triggers this coverage. Since contractual liability coverage only applies to the indemnitee's legal or tort liability, the coverage only applies where a third party is injured or damaged and has made a claim against the indemnitee. Also, where the indemnity is limited to the extent of your negligence, an insurance carrier will deny a claim under contractual liability where the injury or damage is due to the indemnitee's fault or negligence.

6. The EPA removed several 50-year-old underground storage tanks and remediated surrounding property from a facility Joe Bob purchased 10 years ago. Which of the following statements most accurately describes Joe Bob's liability for the \$456,000 incurred by the EPA for these services?
- A. No liability unless he used the tanks
 - B. Proportional liability with previous owner(s)
 - C. Shared equally with the EPA
 - D. **Liable for the full amount**

*As the current owner of the site, Joe Bob is liable under CERCLA for the entire cleanup cost. Joe Bob will also be held accountable under successor liability, **which allows current owners to be held liable even if they did not know of, or contribute to, the contamination of the property.** After he pays, the EPA may be able to collect from the previous owner depending on numerous factors, or from insurers if he purchased the appropriate coverages.*