



IRMI[®]

Workshop L

***FILLING THE GAPS IN CONTRACTORS'
INSURANCE COVERAGES***

Presented by

**Jeffrey A Segall
Vice President
CNA Construction**

Wednesday, November 10, 9 a.m.–noon



You understand what it takes to build something that will last for years.

We understand what it takes to protect everything your business builds.

A leading choice among contractors, CNA has helped manage the unique risks of construction professionals for over 60 years. With industry knowledge and financial strength, we create flexible and comprehensive programs and coverages. Our partnerships with trade associations and construction experts ensure we stay abreast of industry trends to better meet your business needs.

For most sectors of the Commercial Construction industry, we offer standard business coverages including Property, Liability, Auto and Workers' Compensation, as well as specialized coverages for Limited Pollution Liability, Broadened Liability for Damage to "Your Product" and "Your Work," Contractor's Equipment, and more. We provide the right coverage options so construction professionals can concentrate on building a stronger business.

To discover the broad range of insurance products available from CNA, contact your independent agent or broker or visit www.cna.com

The CNA logo, consisting of the letters "CNA" in a bold, red, sans-serif font.

CNA is a service mark and trade name of CNA Financial Corporation. Copyright 2004. All rights reserved. One or more of the CNA Insurance Companies underwrite the products and services described. All coverages not available in all states.

Jeffrey A Segall
Vice President
CNA Construction

Mr. Segall is presenting Workshop L, "Filling the Gaps in Contractors' Insurance Coverages," on Wednesday morning. He is part of the construction team at CNA. As vice president of Field Operations, he supports the execution of CNA's construction strategy to help establish CNA as a premier writer of middle and large construction accounts. He works directly with the regional construction assistant vice presidents to help drive consistency in execution, support trading partnerships with special construction agents, and support implementation of local market strategies that address variances in jurisdiction and market opportunities.

Prior to joining CNA, Mr. Segall was a senior vice president in the Construction Risk Management Group of Willis. In that role, he provided marketing and account servicing assistance to Willis offices and key clients. His prior experience includes various positions at AIG, St. Paul, and a number of agencies now affiliated with Aon and Acordia. He began his insurance career in 1972.

Mr. Segall holds a bachelor's degree in business administration from the University of Texas in El Paso. His professional insurance designations include Associates in both Underwriting and Risk Management, Certified Insurance Counselor, Chartered Property Casualty Underwriter, and Certified Risk Manager. He is recipient of the Continuing Professional Development program award.

Notes

This file is set up for duplexed printing. Therefore, there are pages that are intentionally left blank. If you print this file, we suggest that you set your printer to duplex.

FILLING THE GAPS IN CONTRACTORS' INSURANCE COVERAGES

***Jeffrey A Segall
CNA Construction***

- **Builders risk**
 - Insures building and materials in the course of construction (Non-standard coverage form)
 - Who is covered
 - Everyone on project
 - ATIMA
 - Options
 - Installation floater
 - Deductible reimbursement
 - Waivers of subrogation
 - Valuation
 - ACV / Replacement cost
 - Historic buildings / tax credits
 - Enforcement of building ordinances
 - Renovation projects
 - Perils covered
 - Boiler & Machinery
 - Wind, flood, leakage, mold, quake, subsidence, earth movement
 - Collapse—all risk / named perils
 - Property covered
 - Optional coverages
 - Soft costs
 - Delay of use and occupancy
 - Off site
 - Transportation
 - Term of coverage
 - Consent to occupy
 - Term of project


- Punch list term
- Testing hot/cold
- **General liability**
 - Insures injury to non-employees and damage to non-owned property caused by the negligence of the insured and arising from operations and completed operations (standard coverage form)
 - Types of triggers
 - Occurrence
 - Claims-made
 - Retro date
 - Extension for reporting claims
 - Definition of claim
 - Close of escrow
 - Term of cover
 - Statutes of limitation and repose
 - Who is covered
 - Insureds (focus on JVs)
 - Additional insureds
 - Automatic / scheduled
 - Type of negligence covered
 - Completed operations
 - Limits applied
 - Other Insurance
 - Per job / location
 - Damages to your premises
 - Alienated premises
 - Fire (and other peril) legal liability
 - Damage to your work
 - Work of sub is/n't your work
 - Items that may vary
 - Defense in or out of limit
 - EIFS
 - Silica
 - Term of completed operations

- Work under Wrap-Ups
- Nice stuff
 - Boats
 - Contractual liability modifications
 - Railroads
 - Personal injury
 - Municipalities?
 - Extended cancellation notice
 - Extended personal injury
 - Injury to a fellow employee—Employees as insureds
 - Intentional PD
 - Modified notice of loss / occurrence
 - Motor vehicle laws
 - Unintentional failure to disclose hazards
- Other coverage opportunities
 - Employer's Liability
 - Rigger's Liability
 - Pollution inc. Mold
 - Professional Liability
 - Employment Practices
 - Railroad Protective Liability
- **Umbrella liability**
 - Insures injury to non-employees and damage to non-owned property caused by the negligence of the insured in excess of other liability policies (non-standard coverage form)
 - Insuring agreement / Coverage triggers
 - Occurrence—Claims Made—Close of Escrow
 - Occurrence—Accident—Offense
 - Pay on behalf—Indemnify
 - Who is covered
 - Limits issues
 - Per occurrence
 - Aggregate
 - Excess of aggregate on underlying policies
 - Excess of SIR

- Defense issues
 - Included in limits
 - In addition to limits
 - SIR vs Underlying insurance
- Coverage issues similar to GL, AL, EL but recognize no standard exclusions or cover
 - May be able to add Aviation, Marine, Professional
- **Workers Compensation**
 - Insures employee injuries and work-related illnesses (standard coverage form)
 - Who is covered
 - Sole proprietors, partners, joint venturers, corporate officers, temporary and leased workers
 - Alternate employers and employee leasing issues
 - Additional insureds / waiver of subrogation
 - Employees working in, on or around the water (and other unusual places)
 - Jones Act and Maritime coverage, USL&H, Outer Continental Shelf and U.S. defense bases
 - Where is coverage granted
 - Stop gap
 - Extended protection to monopolistic states
 - Coverage issues
 - Potential terrorism gap, especially self-insureds
 - Silica
 - Nice stuff
 - Extended notice for reporting claims
 - Extended notice of cancellation or non-renewal
 - If any's
- **Auto liability**
 - Insures bodily injury and property damage resulting from the use or ownership of a vehicle (standard form)

FILLING THE GAPS IN CONTRACTORS' INSURANCE COVERAGES


**Jeffrey A Segall
CNA Construction**



Filling the Gaps in
Contractor's Insurance
Coverages

Table of Contents

Builder's Risk
General Liability
Automobile Liability
Worker's Compensation
Umbrella Liability





Filling the Gaps in
Contractor's Insurance
Coverages

Builder's Risk



Filling the Gaps in
Contractor's Insurance
Coverages

Builder's Risk

Insures loss or damage to buildings and materials during the course of construction

There is no recognized standard coverage form

Could be purchased and negotiated by Owner, Contractor or Lender



Builder's Risk

What is Covered and Where

What

- Existing structures
- Temporary structures
- Forms & False work
- Scaffolding
- Land

Where

- The location is covered
- W/I 100 ‘
- Adjacent areas
- Over water
- In Transit



Builder's Risk

Who is Covered

Insured named on policy

- Everyone on the project, not ATIMA
 - Installation Floater

Waivers of Subrogation

Builder's Risk

When Covered

Term of policy is not the term of coverage

- Term of construction
- Punch list returns
- Testing period
- Consent to occupy



Builder's Risk

Valuation

Typically Actual Cash Value is the same as Replacement Cost

- Renovation Projects
- Historic Buildings / Tax Credits
- Enforcement of codes and ordinances



Builder's Risk

Perils Covered

Is All Risk always the same?

- Collapse – All Risk / Named Perils
- Wind & Flood – deductibles, sublimits, definitions
- Earth movement – earthquake, subsidence, sinkhole
- Mold & leakage
- Boiler & Machinery – Applied Technologies
- Testing – hot & cold



Builder's Risk

Optional Coverages

These are not always provided

- Delay of use and occupancy
- Soft costs
- Off site storage
- Property in transit – type of transit





Filling the Gaps in
Contractor's Insurance
Coverages

General Liability



Filling the Gaps in
Contractor's Insurance
Coverages

General Liability

Covers injury to non-employees and damages to non-owned property caused by the negligence of the insured and arising from both on-going and completed operations and negligence assumed via some contracts

There is a recognized standard coverage form - ISO

Usually purchased by each contractor, can be included in a wrap up program and negotiated and purchased by someone else



General Liability

Types of Triggers

The most common trigger is occurrence

- Claims-made
 - Retro date
 - Extension for reporting claims
 - Definition of claim
- Close of escrow
 - Term of cover
 - Statutes of limitations and repose

CAUTION CAUTION

General Liability

Who is Covered

Built-in Gaps for contractors

- Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
- No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

Joint Ventures must be added by manuscript endorsements as Insureds and, if required, as Additional Insureds.

General Liability

Who is Covered

Additional Insureds

- Engineers, Architects & Surveyors (CG20 07) – Blanket coverage [..\.lcg2007.doc](#) [..\.lcg2032.doc](#)
- Owners, Lessees or Contractors
 - Automatic (CG 20 33)
 - Scheduled (CG 20 10)
- Completed operations (CG 20 37)
- Issues
 - Ongoing operations vs ongoing and completed operations
 - Degree of negligence covered... can you assume negligence of others where you have not contributed to the loss?



General Liability

Limits

Other Insurance

- Contributing limits can be done on several bases
 - Pro rata share based on limits
 - Primary basis
 - Excess basis
- Per Job / Location (CG25 03) – amends General aggregate to apply separately to each job – Does not affect Prods / Comp Ops agg [..\.lcg2503.doc](#)
- Amendment of Limits for Designated Project (CG2501) – Does not increase aggregate limit per job, only increases the limit for a particular job, limits are still shared between jobs



General Liability

Damages to Your

Premises

- Alienated premises – speculative buildings
- Fire and other peril legal liability – Fire automatic up to \$50,000

Work

- Work of your sub (CG 22 94 & CG 22 95) – Sub's work becomes your work
- Rework / Rip & Tear



General Liability

Items that may vary

- Defense – in or out of limits
- EIFS – and other synthetic stucco
- Silica
- Terms of completed operations coverage
- Work performed under wrap ups



General Liability

Things to consider

- Boats - owned and non owned
- Contractual liability modifications
 - Railroads
 - Personal injury
 - Municipalities
 - Amendment of Insured Contract (CG24 26) – provided BI & PD caused in whole or in part by you or on your behalf
- Legal Liability for borrowed equipment
- Extended cancellation notification
- Extended personal injury coverage



General Liability

More things to consider

- Injury to a fellow employee
 - Employees as insureds – automatic for all but claims from fellow employees
 - Leased workers (CG 04 24)
- Intentional PD
- Modified notice of loss / occurrence
- Unintentional failure to disclose hazards
- Inadvertent notice of loss on another policy
- Motor vehicle laws (CG 99 01)
- Discontinued Operations – remember JV's, Partnerships and LLPs





Filling the Gaps in
Contractor's Insurance
Coverages

General Liability

Related coverages

- Employer's Liability – Stop Gap – also see Extended Statutory Benefits in W/C section
- Non-Owned Aircraft
- Riggers Liability – property in your care, custody or control
 - Inland Marine – non-standard
 - GL – not ISO - remove 2 exclusions (that particular part & CCC)
- Pollution including mold
- Professional Liability
- Employment Practices Liability
- Railroad Protective Liability – watch subrogation issues
- Construction Project Management Protective Liability (CG 35 15)
- Owners & Contractors Protective Liability (CG 00 09)





Filling the Gaps in
Contractor's Insurance
Coverages

Automobile Liability



Filling the Gaps in
Contractor's Insurance
Coverages

Automobile Liability

Covers injury to non-employees and damages to non-owned property caused by the negligence of the insured and arising from the use of an automobile

Some coverage exists for injuries to employees – U/M, No-Fault

There is a recognized standard coverage form - ISO

Always purchased by each contractor



Automobile Liability

What Autos Are Covered

Use of Symbols

- Symbol 2,8,9 – Owned, Non-owned, Hired
- Symbol 1 “any auto”



Automobile Liability

Who is Covered

Insureds

- Employees as Insureds (CA 99 33) – employee use of nonowned autos for business or pleasure
- Individual Named Insured Endorsement (CA 99 17) – covers Ins'd and spouse – watch fellow employee exposure
- Employee as Lessor (CA 99 47) – employee owned autos covered here, employees too
- Lessor – Additional Insured and Loss Payee (CA 20 01) or Hired Autos specified as autos you own (CA 99 16)





Filling the Gaps in
Contractor's Insurance
Coverages

Automobile Liability

Who is Covered (cont.)

- Employee Hired Autos (CA 20 54) – allows employees to rent autos in their own name on company business
- Broad form additional insured – blanket automatic
- Drive other car coverage (CA 00 10) for those employees & spouses that are furnished a company auto and have no personal auto coverage
- Fellow Employee Coverage (CA 20 55) – watch leased workers
- Fellow Employee Coverage for Designated Positions (CA 20 56) – watch leased workers



Filling the Gaps in
Contractor's Insurance
Coverages

Automobile Liability

Additional coverage

- Pollution Liability (CA 99 48) – covers cargo cleanup
- MCS-90 – not risk transfer
- Work w/i 50' of a Railroad (CA 20 70) – modifies contractual coverage
- Coverage for injury to leased workers (CA 23 25)
employer's liability
- Territory
- Mexico (CA 01 21)





Automobile Liability

Things to consider

- Schedule vehicles as mobile equipment (CA 23 03)
- Schedule Mobile Equipment as Vehicles (CA 20 15)
- Modified notice of loss, claim or accident
- Unintentional failure to disclose hazards
- Extended notice of cancellation or non-renewal

- Temporary worker is covered only as a permissive driver. Their auto would be a non-owned auto, and they may not enter into a contract





Filling the Gaps in
Contractor's Insurance
Coverages

Worker's Compensation



Filling the Gaps in
Contractor's Insurance
Coverages

Worker's Compensation

Covers the medical and disability claims for work-related injuries and occupational diseases to employees.

There is a recognized standard coverage form with few exceptions

Always purchased by each contractor or through a Wrap Up program



Worker's Compensation

Two Coverages In One Policy: Statutory & Employers Liability

Statutory benefits

Adding a new statute

- Defense Base Act (WC 00 01 01 A)
- Longshore and Harbor Workers' (WC 00 01 06A)
- Outer Continental Shelf Lands Act (WC 00 01 09A)
- Nonappropriated Fund Instrumentalities Act (WC 00 01 08A) - entertainment and retail goods and services to armed forces personnel on a military base



Worker's Compensation

Two Coverages In One Policy: Statutory & Employers Liability

Statutory benefits

Who is insured

- Alternate Employer endorsement (WC 00 03 01A) oil companies & property managers like adding an additional insured
- Employee leasing client endorsement (WC 00 03 19) u lease they cover
- Labor Contractor endorsement exclusion (WC 00 03 20A) u lease u cover
- Multiple Coordinated Policy endorsement (WC 21 06 04)
- Joint venture as Insured – includes members (WC 00 03 05)
- Partners, Officers & Others exclusion (WC 00 03 08)
- Sole Proprietors, Partners, Officers and Others coverage (WC 00 03 10)
- Voluntary Compensation & Employers Liability (WC 00 03 11A)



Worker's Compensation

Two Coverages In One Policy: Statutory & Employers Liability

Statutory benefits

Where or what coverage is excluded

- Designated workplaces exclusion (WC 00 03 02)
- Medical benefits exclusion (WC 00 03 06)

Limits Sharing

- Dual or Joint Employee endorsement (WC 21 06 04)

New coverage

- Voluntary compensation marine coverage (WC 00 02 03)
- Voluntary Foreign
 - Not NCCI except in a couple of states
 - Endemic disease & repatriation



Worker's Compensation

Two Coverages In One Policy: Statutory & Employers Liability

Employer's liability

- Maritime coverage (WC 00 02 01A) & Limited marine coverage (WC 00 02 04)
- Stop Gap - Employers liability endorsement (WC 00 03 03C) (not Ohio, Ohio is separate – excludes intentional injuries)

Unusual

- Medical Benefits reimbursement coverage (WC 00 03 07) – insureds that do not qualify to self insure
- Waiver of rights (WC 00 03 13) – not legal in all states
- Extended Statutory Benefits in Monopolistic states – monopolistic state “drive – throughs”
- Modified notice of injury
- Extended notice of cancellation
- Various premium credits / by state





Filling the Gaps in
Contractor's Insurance
Coverages

Umbrella



Filling the Gaps in
Contractor's Insurance
Coverages

Umbrella

In addition to providing an excess layer of liability coverage over the GL, AL, and EL coverages, most umbrellas offer some liability insurance over a self insured retention for other types of liability

There is no recognized standard coverage form

Generally purchased by the contractor but could be part of a wrap up insurance program



Umbrella

Insuring Agreement

Coverage triggers

- Occurrence – Claims Made – Close of Escrow
- Accident or Offense
- Pay on behalf – Indemnify

- Indemnify Vs Pay on Behalf of



Umbrella

Things to Consider

Since this policy is excess of the General, Auto, and Employers Liability coverages, issues mentioned there apply here as well

- Not standard coverage
- Contractors LIMITATION endorsement
- Approach on defense
- Drop down provisions
- Conditions surrounding maintenance of underlying
- Punitive Damages
- Uninsured Motorists
- Territory

Umbrella

More Things to Consider

Limits

- Apply excess of retention
- Apply excess of underlying
- Retained amounts met only by actual damages (e.g., not defense costs)
- Retained amounts met only by claims covered by this policy

- Aggregate limits apply:
 - Aggregate applies to all lines
 - P/CO aggregate
 - Employers liability aggregate
 - All other lines aggregate
 - Aggregate does not apply to auto
 - Wherever aggregate applies in underlying coverages



Disclaimer

The purpose of this presentation is to provide general information, rather than advice or opinion. It is accurate to the best of the speaker's knowledge as of the date of the presentation. Accordingly, this presentation should not be viewed as a substitute for the guidance and recommendations of a retained professional. In addition, CNA does not endorse any coverages, systems, processes or protocols addressed herein unless they are produced or created by CNA.

To the extent this presentation contains any descriptions of CNA products, please note that all products may not be available in all states. Actual terms, coverages, amounts, conditions and exclusions are governed and controlled by the terms and conditions of the relevant insurance policies.

CNA is a service mark registered with the U.S. Patent and Trademark Office.

Copyright © 2004, Continental Casualty Company. All rights reserved.

