

Preconference Workshop 5

Monday, November 7, 9:00 a.m.–4:30 p.m.

BUILDERS RISK—A REQUIRED COVER

Presented by

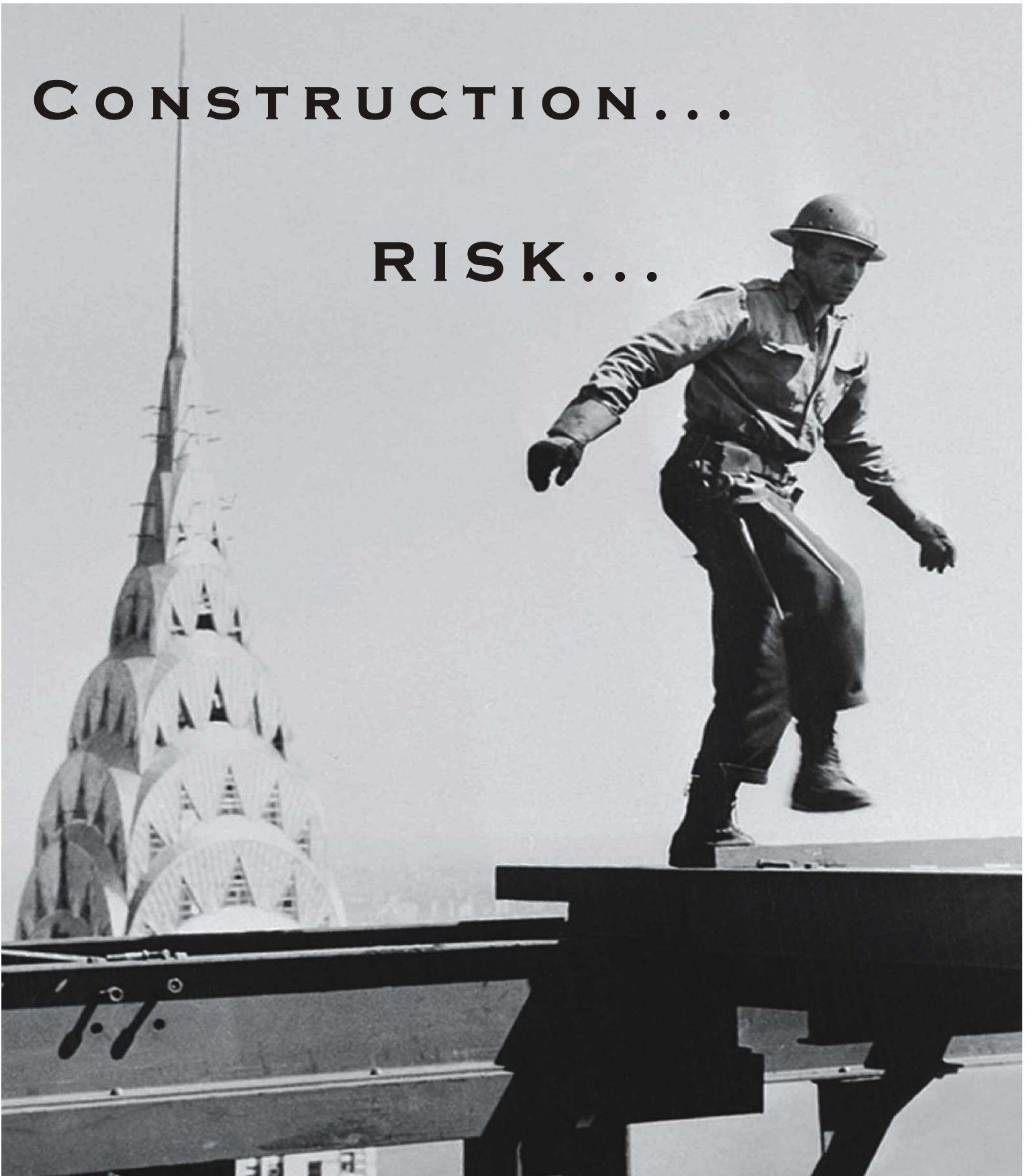
Bruce Bitler
Property Vice President—Construction
Zurich



A popular introductory course, this workshop provides an overview of construction bond and insurance programs. The day starts with an overview of contract bonds that are commonly used in construction, including when each type of bond is appropriate and what they do and do not cover. Subsequently, experts in general and umbrella liability, builders risk, and workers compensation insurance will examine the coverage provided by these policies. Designed primarily for those who are new to construction insurance, this session provides a foundation for understanding more advanced concepts that will be examined in other Conference workshops. This workshop will review the common types and uses of construction contract bonds; examine the coverage provided by contractors' core insurance policies; identify coverage challenges and make recommendations for filling gaps or modifying problematic policy language; and provide a basis for understanding higher-level concepts presented during the remainder of the Conference.

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Bruce Bitler
Property Vice President—Construction
Zurich North America Construction

Mr. Bitler is one of the presenters for Preconference Workshop 5, "Introduction to Construction Bonds and Insurance," on Monday. He serves as vice president of Large Commercial Property for Zurich's construction business unit in North America. He sets the strategic direction of the Construction Property group to achieve both long- and short-term profit/revenue goals. Mr. Bitler works closely with division actuaries and intermediaries to secure underwriting treaty capacity, the pricing of the product offerings, coupled with the management of the total book of business via underwriting account pricing guidelines; product line directives, and individual underwriter authorities. He provides direction in response to changing market conditions to reach the business unit's ROE objectives, including creating product wording, setting national and regional cross-marketing objectives, and developing a close partnership with claims, risk engineering, and policy processing.

Mr. Bitler joined Zurich in 1998 to lead the South Central Property unit for the Construction BU. He developed the book of business from slightly under \$4 million to just over \$30 million. In 2003, he was promoted to his current position as national head of Property Construction—Large Owners and Contractors. Prior to joining Zurich, Mr. Bitler worked at Cigna Special Risk Facilities serving in a variety of positions over 20 years. His most recent position with Cigna involved the development and management of a Power Generation book of business that included both regulated and nonregulated utility business. Prior to Cigna, Mr. Bitler managed the inland marine underwriting unit for Hartford Fire Insurance Company in Dallas.

Mr. Bitler received his bachelor of science degree in Business Administration from the University of Maine.

Notes

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BUILDERS RISK—A REQUIRED COVER

**Bruce Bitler
Zurich**

- I. What Is Builders Risk Coverage?**
- II. Why Is It Important To Buy this Coverage?**
- III. Who Is an Insured under a BR policy?**
- IV. What Are the Standard Coverages and Types of Projects/Property Insured under a Typical BR Policy?**
- V. What Perils May Be Covered or Excluded under a BR Policy?**
- VI. What Optional Extensions of Coverage Are Usually Found in a BR Policy?**
 - A. Transit
 - B. Off-site storage
 - C. Expediting
 - D. Blueprints
 - E. Fire department service charges
 - F. Ordinance or law
 - G. DICC
 - H. Existing property
 - I. Debris removal
 - J. Delay in completion – gross earnings, loss of rents, additional expenses, etc.
- VII. What Types of Property Are Normally Excluded from BR Policies?**
 - A. Vehicles
 - B. Watercraft
 - C. Aircraft
 - D. Contractor's equipment
 - E. Etc.

VIII. What Perils or Causes of Loss Are Usually Excluded from BR Policies?

- A. War
- B. Nuclear
- C. Dishonesty
- D. Pollutants or contaminants
- E. Etc.

IX. What Information Is Needed To Obtain BR Insurance?

- A. Project information
- B. Location
- C. Type of project
- D. Construction
- E. Value information
- F. Hard cost
- G. Soft cost
- H. Limits of liability required
- I. Deductibles to apply

Builders Risk – A Required Cover

**Presented By Bruce Bitler
Vice President / Zurich Construction**

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Murphy's Law

Anything that can go wrong will go wrong !

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Builders Risk – What Is It?

- The purpose of builders risk insurance (BRI) is to cover loss or damage to work in process at the construction site from a fortuitous event.

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Builders Risk – General Coverage Issues

- What is builders risk coverage?
- Why is it important to purchase this coverage?
- Who is insured under a builders risk cover?
- What are standard coverages and types of projects insured under a typical builders risk policy?

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It Is Required by Contract –

- The Standard AIA Construction Contract between the Project Owner and General Contractor says the Owner will provide BRI insurance.*
- 11.4.1 states whose interest shall be included ... Owner, Contractor, Sub-contractor & Sub-subcontractors
- What coverage is required?

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AIA Owner/Contractor Contract

- 11.4.1.1 Property insurance (BRI) shall be on an “all risk” or equivalent policy form and shall include insurance against the perils of fire including extended coverage, theft, vmm, collapse, quake, flood, windstorm, falsework, testing and start-up, temporary buildings, debris removal, including demolition occasioned by legal requirements and shall cover compensation for Architect’s and Constructor’s services and expenses.

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Builders Risk – Why Is It Important?

Without BRI insurance projects would not be built.

Developers/Owners & Bankers would not provide or loan the needed funds for a project if they could not transfer the risk to an insurance company via a BRI policy.

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Builders Risk – Who Is an Insured?

- Owners/Developers
- General Contractors
- Subcontractors
- Mortgagees and/or Loss Payees

It is often typical to see sub-subcontractors of every tier included as Additional Insureds as their respective interest in the insured project may appear.

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What about Including Architects and Engineers as Additional Insureds?

- Some company policy forms specifically exclude A&Es
- Some forms are silent as to A&Es as Additional Insureds. But you need to read the Subrogation Clause to understand what if any limitations may apply !
- Many companies offering BRI coverage will cover A&Es but only to the extent of their on-site activities

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Coverage by Another Name ?

- Installation Floater
- Builders Risk Policy
- Contractor's All Risk (CAR)
- Erection All Risk (EAR)

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Builders Risk – Types of Projects Insured

CAR – Contractors All Risk

- **Bridges**
- **Buildings**
- **Dams**
- **Harbors**
- **Highways / Roads / Runways / Taxiways**
- **Tunnels**

Typical project stages – engineering, site preparation, foundation, structural, electrical, mechanical, installation, cold testing completion, acceptance & operation

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Builders Risk – Types of Projects Insured

EAR – Erection All Risk

- **Automotive Assembly Plants**
- **Cement Plants**
- **Co-generation / Power Plants**
- **Petrochemical / Refineries**
- **Steel Mills**

Typical Project Stages – engineering, site preparation, foundation, structural, electrical, mechanical, installation, completion, cold & hot testing, commissioning, acceptance, operation / maintenance

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Elements of a BRI Policy

- Insuring Agreement
- Attachment / Termination Wording
- Perils Insured
- Perils Excluded
- Property Excluded
- Extensions of Coverage, if any
- General Policy Conditions
- Policy Definitions

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Insuring Agreement – Examples

- We will pay for direct physical loss of or damage to Covered Property caused by a covered cause of loss.
- This policy subject to terms, exclusions, limitations and conditions herein or endorsed hereto, insures against all risks of direct physical loss of or damage to property insured while at the location of the insured project, off site or in transit occurring within term of policy

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When Should Coverage Bind?

- Upon notice to proceed from the Owner?
- When the GC mobilizes on site?
- When the project finances are arranged?
- When the lender requires a certificate of proof of insurance?
- When the Construction contract is signed?
- When finalization of the Construction Schedule is complete?

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Territorial Limits

- Not all policies are the same!
- Coverage applies – within the Continental United States
- Coverage applies – Fifty states comprising the U.S. including the District of Columbia and Canada, including territorial coastal waters
- Coverage applies – Worldwide

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Termination Clause – Company A

“ This insurance shall cease to attach as of the time the Insured Property is taken over or taken into use by the purchaser, tenant or owner or the expiration which ever 1st occurs.”

or

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Termination Clause - Company B

Coverage begins on (see Dec pg) and ends when one of the following 1st occurs

1. Your interest in the Covered Property ceases
2. Bldg or structure is accepted by owner
3. You abandon project
4. It is put to intended use or leased or rented
5. Construction is completed for > 90 days
6. The policy expiration date

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Builders Risk – Standard Coverages

Permanent Works –

- Materials
- Supplies
- Equipment
- Machinery
- Other property of similar nature (property of insured or others)

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Builders Risk – Standard Coverages

Temporary Works –

- Scaffolding
- Form Work
- Fences
- Shoring
- Hoarding of Supplies
- Falsework
- Temporary Buildings

All incidental to the project and the value which has been included.

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Builders Risk – Covered Perils

- All risk, including such key perils as:
- Fire, Smoke
- Lightning, Windstorm, Hail
- Aircraft Impact
- Explosion, Riot, Civil Commotion
- Collapse
- Theft/Burglary
- Vandalism & Malicious Mischief
- Water Damage, Sprinkler Leakage, etc.

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Builders Risk – Optional Covered Perils

- Named Storms
- Flood
- Earthquake

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Flood Definition - Company A

Flood shall mean - A general and temporary condition of complete inundation of normally dry land areas, including dewatered areas, from:

The overflow of inland or tidal waters;

The unusual and rapid accumulation or runoff of surface waters;

Mudslides (i.e. mudflows) which are caused by flooding and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current;

The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding the cyclical levels which result in flooding.

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Flood Definition – Company B

Water damage - means all water damage, including but not limited to, flood, inundation, waves, tidal water or rain fall and/or resultant runoff: all whether wind driven or not.

Company B – Note water damage includes flood

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Builders Risk – Excluded Perils

- Consequential loss, damage or expenses of any kind
- COST OF MAKING GOOD –
 - Faulty or defective workmanship, supplies or material
 - Fault, defect, error, deficiency or omission in design, plan or specification *

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Builders Risk – Excluded Perils

- Wear & tear, gradual deterioration, inherent vice, latent defect, corrosion, rust, dampness or dryness of the atmosphere
- Hostile or warlike actions in time of peace or war
- Unexplained disappearance or shortage upon taking inventory

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Builders Risk – Excluded Perils

- Insurrection, rebellion, revolution, civil war or commotion
- Seizure or destruction of property by governmental authority
- Nuclear reaction, radiation or radioactive contamination, except the peril of fire but – infidelity, dishonesty or fraudulent activity

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Builders Risk – Excluded Perils

- Loss, damage, cost, expenses, fines or penalties
- Any form of fungus/mold
- Contaminants or pollutants
- Asbestos material removal

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Builders Risk – Excluded Perils

- Demolition increased cost or reconstruction, repair, debris removal or loss of use necessitated by enforcement of law or ordinance regulating asbestos
- Any governmental order or direction declaring that asbestos material must be removed

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Builders Risk – Excluded Perils

- Loss or damage covered under any written or implied guarantee or warranty by any manufacturer or supplier
- Subsidence, shrinking, settling, cracking & expansion
- Infestation, disease, freeze, drought, hail, weight of ice & snow or any damage caused by insects, vermin, rodents or animals

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Builders Risk – Excluded Perils

- Erosion
- Electrical or magnetic injury to or errors and omissions in creating, processing or copying electronic records
- Software loss (Cyber Exclusion)
- Hot testing

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Builders Risk – Excluded Property

- Land & land values *
- Contractor's tools, machinery, plant and equipment
- Vehicles or equipment licensed for highway use, rolling stock, aircraft or watercraft
- Water, animals, standing timber and growing crops

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Builders Risk – Excluded Property

- Existing property unless otherwise insured
- Prototype, developmental, used machinery or equipment unless otherwise insured
- Transmission and distribution lines upon energization at the completion of testing

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BRI – Extensions of Coverage

- Debris Removal
- Expediting Expenses
- Fire Brigade Charges & Extinguishing Expenses
- Offsite Storage
- Occupancy

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BRI – Extensions of Coverage

Delay In Completion – (Owners Interest)

- Loss of Rental Income
- Loss of Gross Earnings
- Soft Costs/Additional Expenses

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BRI – Other Coverage Extensions

- Claims Preparation Costs
- Limited Cleanup & Contamination – on site
- TPL – Foreign Projects
- Suppliers Interest – N.P. Perils (Flexa)
- Maintenance – Visits or Extended/Foreign
- Mold/Fungus

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BRI – Extensions of Coverage

- DIC/DOC – Purchased to bring coverage up to current policy terms on domestic or foreign projects
- Damage to Existing Property
 - All Risk
 - or
 - Only Arising Out of Construction Activities

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Debris Removal

- Coverage extension is on a per-occurrence basis
- Coverage is triggered by an insured physical loss of or damage to property insured
- Normally seen as a % of the amount of physical loss or up to a dollar amount, whichever is less !

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Debris Removal – Wording

- In the event of direct physical loss or direct physical damage, this insurance shall also pay the cost of removal of material and debris being part of the insured property at the construction project.
- It will not cover any cost or expense to:
 - a. Extract Contaminants or Pollutants from debris: or
 - b. Extract C&P from land and/or water; or

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Debris Removal, continued

- c. Remove, restore or replace land and/or water made necessary due to the presence of Contaminants and/or Pollutants; or
- d. Remove or transport any property, material or debris to a site for storage or decontamination required because the property, material or debris is affected by Contaminants and/or Pollutants whether or not such Is required by law

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Fire Dept. Service & Extinguishing Exp.

- Fire Dept. service charges & extinguishing expenses
- Loss of extinguishing materials expended in fighting fire

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Off-Site Storage

- Most BRI policies cover some form of off site storage of building materials equipment and supplies
- Coverage – anywhere w/in policy territory
- Typically coverage does not include property in the course of manufacturing or processing

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Occupancy

- Why is occupancy important?
- Not all Companies include this coverage as part of standard form
- This is due to concern of increased exposure resulting from the use and occupancy of the Insured project.
- Some companies provide beneficial occupancy and others charge an A/P depending upon the nature of the exposure and put a limitation on duration.

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Expediting Expenses – Include

- Additional wages for overtime, night work, work on public holidays and
- Extra cost of express freight & other rapid means of transportation
- To make temporary repairs & to expedite the permanent repair or replacement of insured property

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BRI – Extensions of Coverage

- Valuable Papers (Plans, Blueprints, Drawings, Models, etc.)
- Transit
- Trees, Shrubs, Plantings & Landscaping
- Ordinance or Law / DICC

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Transit

- Applies anywhere within policy territory
- Normally covers loading and unloading
- Extends to inland and coastal waters but excludes Ocean Marine shipments
- Some Policies do not include air cargo shipments.

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Ordinance or Law & DICC

- Covers cost of demolishing the undamaged parts of project including debris removal
- Picks up the increased cost of repair, rebuilding of damaged and undamaged parts
- Is limited to the same premises and laws, ordinances in effect at time of loss
- Coverage does not apply to contaminants or pollutants or with respect to asbestos removal

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Testing Coverage – Cold vs. Hot

Cold Testing – may include:

- Hydrostatic pneumatic, electrical, hydraulic or mechanical

Hot Testing – may include:

- The introduction of feed stock, catalyst or similar media for processing & handling or commencement of supply to a system

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General Conditions

Increased Hazard
Misrepresentation & Fraud
Errors & Omissions **
Inspection & Audit
Sue & Labor (Protection of Property)**
Examination Under Oath
Notice, Proof & Payment of Loss
Partial Loss
Subrogation **

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General Conditions, continued

- Contributing Insurance
- Excess Insurance
- Other Insurance
- Underlying Insurance
- Recovery or Salvage
- Reinstatement
- Bankruptcy or Insolvency
- Brands and Trademarks
- Entry, Control, Abandonment

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Conditions, continued

- Pair & Set
- Appraisal
- Alternative Dispute Resolution
- Assignment
- Benefit to Bailee
- Suit Against the Company (Legal Action Against Us)
- Cancellation
- Statutes

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General Conditions, continued

- Reporting Clause
- Final Adjustment
- Insured's Representative
- Valuation Clause **

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General Conditions – Comments **

- E&O coverage –
 - No unintentional errors or omissions in any information relative to this insurance or required to be reported to the Company in Compliance with the requirements of this Policy will prejudice the Named Insured’s right of recovery, but will be reported to the Co. within 30 days of the Named Insured’s discovery.

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Sue and Labor /Protection of Prop.

Company A –

In the case of loss or damage, it shall be lawful and necessary for the Insured, his or their factors, servants or assigns, to sue, labor and travel for in and about the defense, safe-guard, and recovery of the Insured Property, or any part there of, without prejudice to this insurance, nor shall the acts of the Insured or the Company, in recovering, saving and preserving the Insured Property in case of loss be considered or an acceptance of abandonment. The expenses so incurred shall be borne by the Insured and the Company proportionately to the extent of their respective interests.

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Sue & Labor – Company B

The Named Insured will take reasonable steps to protect, recover or save the property insured & minimize any further potential loss or damage when:

A. The property insured has sustained direct physical loss or damage by an insured peril: or

B. The property insured is in imminent danger of sustaining direct physical loss or damage from:

1. Named Windstorm – but only when the potential for the same to occur has been forecast by Nat'l Weather Bureau:
2. Flood – but only when the potential for the same to occur has been forecast by Nat'l Weather Bureau, etc.
3. Fire

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Subrogation Clause

- Allows Insured to waive rights of subrogation, if in writing in advance of a loss
- Typically, the Company will have an exception to the waiver as respects:
 1. Architect or Engineers relative to their professional services, and
 2. To any Mfr. or Supplier of M&E or other property for the cost of making good any loss or damage covered under a guarantee or warrantee, expressed or implied

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Special Purpose Endorsements

- Directional Drilling
- Foreign Locations
- Terrorism
- Dam, Cofferdam & Tunnel
- Dewatering
- Pipeline & Cable
- Serial Loss Limitation
- Tunneling – 125%
- Used Equipment – Testing Limitation

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Special Purpose Endorsements

- Replacement Power Exclusion
- Power Generation Excess Payments Exclusion
- Design Error Defects Exclusion
- Flood, Earthquake or Windstorm Exclusions
- Warranty as to Site Protection or Following Manufacturer Specifications, etc.

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Remember the Elements of a BRI Policy

- Insuring Agreement
- Attachment / Termination Wording
- Perils Insured
- Perils Excluded
- Property Excluded
- Extensions of Coverage, if any
- General Policy Conditions
- Policy Definitions

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