**Workshop T**

***Wednesday, November 9, 1:30–3 p.m. and 3:30–5 p.m.***

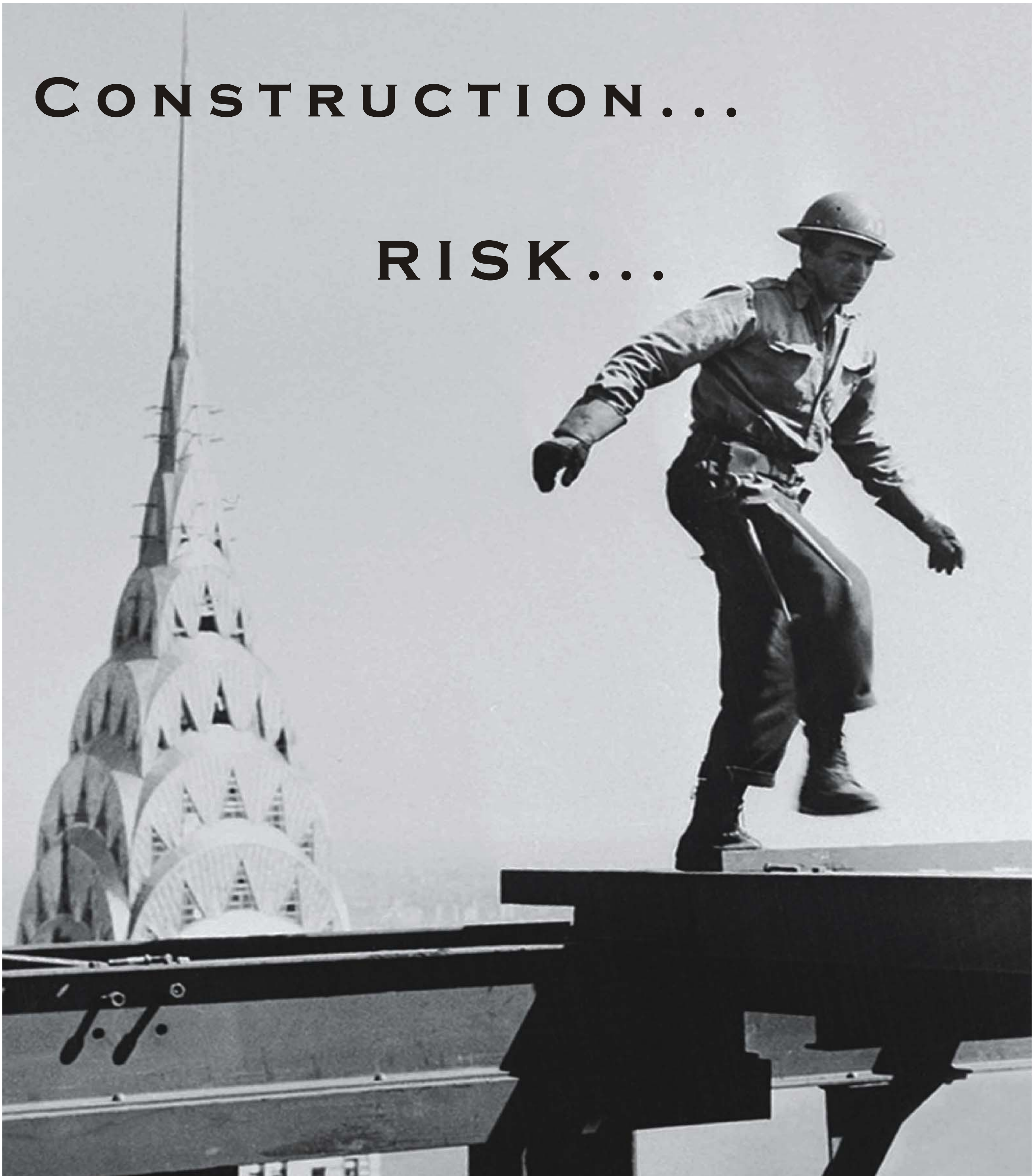
# *WHO WANTS TO SAVE A MILLION BUCKS?*

**Presented by**

**Steven D. Davis**
**Director**
**McGriff, Seibels & Williams, Inc.**

**Susan Staff**
**Risk Manager**
**Zachry Construction Corporation**

In the format of a popular game show, this interactive and educational session will help contractors and their insurance representatives identify ways to protect corporate assets. Through a series of “games” the audience will learn how to avoid unintentional assumption of risks, how to match the insurance coverage to the risks assumed, and a variety of strategies for reducing insurance costs. Contractors will learn where to focus their negotiations and how to ensure they pay the lowest possible price for comprehensive coverage.


CONSTRUCTION...
RISK...

## Steven D. Davis
### Director
### McGriff, Seibels & Williams, Inc.

Mr. Davis is copresenting Workshop T, "Who Wants To Save a Million Bucks?," on Wednesday afternoon. He is senior vice president and director of Construction Risk Services of McGriff, Seibels & Williams in Birmingham. He is the practice leader for Construction Risk Services at MSW and is responsible for negotiation, placement, servicing, and client presentations to the construction industry. He is recognized throughout the industry in program design and alternative risk financing methods, such as captive insurance companies. He is a past recipient of IRMI's Words of Wisdom award, and he is widely published in insurance and construction periodicals. In addition to the IRMI Construction Risk Conference, he also participates on the national construction risk management speaking circuit for organizations such as AGC, CFMA, and AICPA. He was a contributing author for *Construction Accounting Deskbook 2000–2004,* published by Harcourt, and has recently authored the national AGC's new publication titled *Risk Management, Insurance & Bonding for the Construction Industry.*

Mr. Davis holds a bachelor of business administration degree in insurance and risk management from the University of Texas at Austin and has also received the Associate in Risk Management (ARM) and Chartered Property and Casualty Underwriter (CPCU) professional designations.

## Susan Staff
### Risk Manager
### Zachry Construction Corporation

Ms. Staff is one of the panelists for Workshop K, "Design-Build Risks and Professional Liability Insurance: A Disconnect," on Wednesday morning and a presenter for Workshop T, "Who Wants To Save a Million Bucks?," on Wednesday afternoon. She currently serves as risk manager for the San Antonio-based Zachry Construction Corporation's Industrial Group Division. Through its various divisions, Zachry Construction Corporation 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, as well as corporate and project environmental and professional liability risk issues. 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 Zachry have included serving as the leader of the first Zachry Home Office Safety Team and serving on the company's Subcontracting Task and Contract Language Review Teams.

Prior to joining 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. As a volunteer, she served as chair of the YMCA of San Antonio and the Hill Country Risk Management Committee. Ms. Staff has made presentations in the areas of contractual risk transfer, additional insured, joint venture liability, and subcontract risk management at regional and national RIMS conferences as well as past IRMI Construction Risk Conferences.

Ms. Staff earned a bachelor's degree in business administration from the University of Georgia, where she majored in risk management and insurance. She has earned the Environmental Risk Management designation from the Institute of Environmental Risk Management at Southwest Texas State University.

# *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.

# *WHO WANTS TO SAVE A MILLION BUCKS?*

***Steven D. Davis***
***McGriff, Seibels & Williams, Inc.***

***Susan Staff***
***Zachry Construction Corporation***

**Objective:** 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," the audience will learn about construction-related insurance, 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.

**I. Contractual Risk Transfer**

A. Matching contractual liability assumptions to insurance coverage

B. Waivers of subrogation—yes or no?

C. Additional insureds—how to avoid giving away the farm

**II. Builders Risk Insurance**

A. Avoiding claims between insureds

B. Closing potential coverage gaps

C. Difference-in-conditions coverage

**III. Casualty Insurance**

A. Reducing workers compensation losses

B. Experience modifier calculation

C. Dovetailing general and umbrella liability policies

**IV. OCIP/CCIP Insurance Programs**

A. Determining which coverage lines to include

B. Avoiding gaps between OCIP coverage and contractor's corporate insurance programs

## V. Design/Build or Professional Liability

A. Assessing need for coverage

B. Identifying gaps between professional and construction exposures and coverage

## VI. Risk Financing

A. Determining which risk financing methods may yield the highest cost savings for a contractor's insurance program

B. How can a captive insurance program be utilized for a contractor's insurance risk management program?

## VII. Construction Risk and Insurance Industry Current Events

# WHO WANTS TO SAVE A MILLION BUCKS?

## 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 and 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" builders 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 builders 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 event affected the construction insurance marketplace the most in recent years?

    A. St. Peter’s acquisition of Travelers
    B. **Travelers’ acquisition of St. Paul**
    C. New York’s acquisition of Eliott Spitzer
    D. Yankees acquisition of Hank Greenberg

    *Travelers and St. Paul “merged” on 4/1/2004 and combined the construction expertise of underwriting, claims, and safety. This event occurred at the height of the tight underwriting cycle and reduced the total number of national markets underwriting construction.*

5. While driving a customer’s truck, 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 becomes 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 (000s) (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. Which insurance company is actively underwriting all types of residential construction projects?

   A. Westchester/ACE- East of Mississippi River, South of the Gulf of Mexico
   B. AIG—Subject to minimum SIR of $100 million with defense inside the limit
   C. Zurich Construction—Only projects in excess of 50 stories with an 8-year warranty.
   D. **None of the above.**

   *Liability Insurance for residential construction is one of the most difficult coverages to place in today's marketplace. There are multiple issues to be addressed in any placement, ranging from statute of repose, commercial grade versus frame, low-rise versus high-rise, defense inside limits, SIR limits for completed operations, wrap-ups versus practice programs, capacity and limits available, completed operations term, underlying limits/insurers, surplus lines markets, cost of coverage, and limited interest by many underwriters. There is some market interest in commercial grade and high-rise projects, but capacity and expertise are minimal even for the most favorable type of project, with unfavorable terms and conditions.*

2. OCIP stands for which of the following?

   A. Owners cannot insure properly
   B. One crazy insurance professional
   **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 builders 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. An owner who is an additional insured under a contractor's general liability insurance policy on ISO's CG 2010 07 04 additional insured endorsement has coverage for third-party bodily injury/property damage claims against the owner:

   A. **Arising from contractors operations except those arising from the owner's sole negligence**
   B. Arising from contractors operations to the extent of the contractor's indemnity obligations in the contract
   C. Up to the limits of insurance the contractor is required to maintain in the contract between the owner and contractor
   D. Only to the extent such claim arises out of contractors negligence

   *In 2004, ISO announced that the additional insured's sole negligence was never intended to be a covered loss exposure under standard additional insured endorsements. The new language provides coverage to the additional insured only when injury or damage is "caused by" an act or omission of the named insured or of an entity acting on the named insured's behalf. Acts or omissions of the additional insured can be a concurrent or contributing cause of the injury or damage, but a direct causal link to the named insured must be made in order to establish coverage under the endorsement. Otherwise, it is important to note (and often misunderstood), that additional insured coverage is not determined by either the indemnity obligations between the owner and contractor, or the insurance limits required in the contract. Except to the extent an additional insured endorsement has been manuscripted to provide specific limitations, an additional insured has full rights to coverage and limits, including the contractor's excess limits, to the same extent the contractor, as named insured, has coverage.*

5. On a contractor-led design/build project, 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 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 the prime contractor 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 that policy period for contractor when losses during that same policy period 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.*

# <u>GAME 3</u>

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 builders risk insurance is a policy that is purchased to provide "gap" coverage when another party is providing the primary builders 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 builders risk coverage. The cost for DIC coverage is typically about 50 percent of full builders risk coverage.*

3. The term "CRIS" stands for:

    A. Craps, roulette, insomnia, slots
    B. Conversion reality integrated systems
    **C. Construction Risk and Insurance Specialist**
    D. Community relations insures success

    *IRMI has developed a new online continuing education program and insurance designation for contractors and the insurance agents, brokers, and underwriters who serve them. The Construction Risk and Insurance Specialist (CRIS) continuing education program is a specialized curriculum consisting of five courses that are presented entirely through the program's Web site, www.CRIS-CE.com. Those who complete the program are entitled to display the CRIS designation to certify their knowledge of construction insurance.*

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 indemnitee's 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 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. Safety management plays a large role for any contractor with an objective of preventing losses. Which one of the following will likely NOT prevent workers compensation losses?

   A. **Filing of EMR-14 form**
   B. Fleet management program
   C. Alcohol and substance abuse
   D. Pre-job hazard analysis

*Safety management protocols for construction firms obviously vary from one contractor to another, but many programs have minimum standards of protocols that are implemented. Such protocols have evolved over the years from a site-specific inspection service to one of behavior modification and continuous improvement. Budgets for contractors over the years have significantly increased due to the wide range of issues involved in safety management. Many underwriters evaluate a contractor's safety program based upon its effectiveness in eliminating losses. While no two programs are identical, many contain specific written practices, such as:*

- *Substance abuse program: pre-hire, post Accident, and random*
- *Incentive programs*
- *Pre-job/Post-job hazard analysis*
- *Fleet safety and driver training, including disciplinary actions*
- *New employee orientation*
- *Task training*
- *Latent defect and quality management*
- *Confined space*
- *Fall protection*

# <u>GAME 4</u>

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. **A contractor damages the owner's existing plant during a critical lift of equipment. 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 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 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 builders risk insurance policy cover?

   A. Repairing and reinstalling the faulty beam
   **B. Repairing the turbine**
   C. Both A and B
   D. Neither A nor B

   *Builders 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 policy by policy, which is why it is essential that the contractor have the right to review any builders risk policies that may be provided by the project owner.)*

4. What substance is excluded by most construction underwriters for liability coverage, both from a primary as well as an umbrella/excess basis?

   A. Helium
   **B. Silica**
   C. Hydrogen
   D. Oxygen

   *Silica began to be excluded in 2004 by most construction underwriters, if not all. Known as the next asbestos by many claims professionals, silica is one of the world's oldest occupational diseases. It is a progressive lung disease caused by the inhalation of crystalline silica dust. These small particles are released into the air when rocks, sand, quartz, and other materials that contain silica are crushed or cut. It is estimated that 2 million workers are exposed to silica each year.*

   *Recently, a* New York Times *article summarized a specific case in Texas: "Many companies have concerns that claimants are double-dipping between asbestos and silica and there may be evidence that this is occurring. Targets of silica lawsuits have asserted for years that the cases against them are part of a moneymaking scheme for lawyers looking for an alternative to asbestos litigation. Deaths caused by silicosis was 200 in 1999 down from about 500 in 1980 but the number of suits based upon contentions of harm from the disease has risen sharply, with about 10,000 claimants" in a Texas case alone.*

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 builders risk policy
   B. A to Z's CGL policy
   C. D. Fective's permanent property policy
   **D. A to Z's contractors 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 builders 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 contractors 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 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 that 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 startup**

   *DSU refers to delay in startup insurance. This insurance is usually purchased as an endorsement to the project builders 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 builders 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 builders risk insurance on a project
   C. Both A and B
   D. Neither A nor B

   *Owners often provide the builders 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 builders 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 builders 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 builders risk insurance.*

4. After 9/11, many construction underwriters and reinsurers were concerned about the number of employees confined to a single location. For which coverage was this concern most expressed?

   A. **Workers compensation**
   B. Employee dishonesty
   C. Sexual harassment
   D. Infidelity coverage

   *Acts of terrorism are not excluded under workers compensation; therefore, the underwriting communities were concerned about the concentration of employees in any single location.*

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 be resist attempts by insurers to use them. If unavoidable, the contractor should demand a corresponding decrease in its premium.*

6. A contractor accidentally ruptures a pipe that causes the customer's plant to shut down for 3 days. Which of the following best protects a contractor 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 builders 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. <u>Do not confuse with government indemnity, which is recognized by the agencies.</u>*

4. TRIA refers to:

   A. Toxic reaction industrial accident
   **B. Terrorism Risk Insurance Act**
   C. Texas Resources Inland Association
   D. Terrorism Reactionary Insurgency Act

   *Enacted in 2002, The Terrorism Risk Insurance Act (TRIA) requires property and casualty insurers writing insurance in the United States to offer coverage for "certified acts of terrorism" as defined in the statute, with the federal government providing reimbursement for a portion of covered terrorism losses paid out by insurers. Coverage is optional for insureds.*

*5.* Fall protection is mandatory at 6 feet for many contractors. In 3 seconds, approximately how far will a man or woman fall if they weighed 220 lbs. and are 6 feet tall, carrying a ham and cheese sandwich, toasted on rye and not tied off?

   A. **144 feet**
   B. None, the sandwich will break the fall
   C. 12 feet
   D. It depends on how tall the building is and whether the sandwich has mayo or mustard

   *Many insurers consider fall protection/restraint system a basic safety management protocol for construction operations. According to National Safety Council, 35 percent of all deaths are related to falls and 97 percent of falls over 25 feet are fatalities.*

6. Which is NOT typically considered an advantage of starting a captive insurance company?

   A. Access to reinsurance capacity
   B. Coverage availability
   C. Cost stabilization
   D. **Certificate acceptance by third parties**

   *The following are some of the more important benefits of using a captive insurer to fund risks:*
   - *Cost stabilization*
   - *Cost reduction*
   - *Improved coverage availability*
   - *Enhanced cash flow*
   - *More leverage with commercial insurers*
   - *Access to capacity for more limits from insurers*
   - *Tax-deductibility of premiums*
   - *More control*