

Workshop W4

Wednesday, October 11, 9 a.m.–noon

GETTING THE MOST FROM YOUR BUILDERS RISK PROGRAM

Presented by

Anthony D'Amico
Vice President
Rollins Accounting &
Inventory Services, Inc.

Harvey M. Goodman
President
Goodman-Gable-Gould/
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While contractors and project owners sometimes disagree about who should provide the builders risk insurance, both parties have an interest in seeing that the policy covers key risks of loss. The first half of this workshop addresses key coverage issues, including how to arrange a policy that provides adequate protection for all parties. The second half of the program examines the issues that arise in determining the actual value of a claim, including a description of covered hard and soft costs.

- Discusses key coverage considerations for contract risk allocations and current market conditions.
- Describes how a loss is valued, including damage to the project and any related delay or extra expense costs.
- Outlines steps to minimize claims disputes and resolve builders risk claims in a timely fashion.



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Anthony J. D'Amico
Vice President
Rollins Accounting & Inventory Services, Inc.

Mr. D'Amico, a presenter for Workshop W4, "Getting the Most from Your Builders Risk Program," on Wednesday morning, is vice president at Rollins Accounting & Inventory Services, Inc., where he is senior accountant responsible for quantifying property lines losses, specializing in business interruption claims. He has managed many multimillion-dollar claims, including Malden Mills, Encore Paper Company, Iron Mountain, Gerber Childrenswear, Federal Realty Investment Trust, JC Penney Company, Beau-lieu of America, Filene's Basement, York International, and Service Merchandise.

Mr. D'Amico previously was regional property supervisor and a property claims specialist with Travelers Insurance Company, where he supervised large property losses throughout the country. While at Travelers, he received extensive training in policy interpretation, principles of insurance and indemnity, property loss investigation and adjustment techniques. He also participated during his tenure at Travelers in a variety of continuing education programs and seminars in property claims matters, with an emphasis on business interruption and other time element losses.

Mr. D'Amico earned a Bachelor of Arts degree in political science/business administration from the State University of New York at Buffalo, where he also did graduate work in business administration and accounting. He holds the American Education Institute designation of Claims Law Associate and is an active member in various organizations devoted to property and casualty insurance.

Harvey M. Goodman, S.P.P.A.
President
Goodman-Gable-Gould/Adjusters International

Mr. Goodman, a presenter for Workshop W4, "Getting the Most from Your Builders Risk Program," on Wednesday morning, supervises and coordinates business operations for Goodman-Gable-Gould/Adjusters International (GGG/AI), a public adjusting firm with 95 employees and 10 offices along the East Coast. GGG/AI represents policyholders that have suffered property damage throughout North America and Europe. Mr. Goodman has been the senior general adjuster/engagement partner for many sizable claims including: ACS Industries, Beau-lieu of America, Carriage Industries, Federal Realty Investment Trust, Filene's Basement, Four Times Square, Iron Mountain, J.C. Penney Company, LaSalle Hotels, Malden Mills, Marriott Warner Center, MeriStar Hospitality, Morgan Stanley/Pyramid Advisors, Sweetheart Cup Corporation, and York International.

Mr. Goodman established Rollins Accounting & Inventory Services, Inc. (Rollins Accounting), in 1994. Rollins Accounting is a wholly owned subsidiary of The Goodman-Gable-Gould Company. Rollins evaluates and quantifies business interruption and extra expense claims and related first-party property and fidelity claims. The Rollins Accounting client roster includes, among others, the New York Palace Hotel, Syratech Corporation, Interstate Hotels, Nash Finch Company, Ocean Beauty Seafoods, and Encore Paper Company.

Goodman-Gable-Gould/Adjusters International has been adjusting commercial and residential property claims for the insured for over 50 years, serving as an advocate for the property holder who has suffered catastrophic property damage. GGG/AI has offices in most major markets throughout the United

States, including Atlanta; Baltimore; Charlotte, NC; Fair Haven, NJ; Melbourne, FL; New York City; Norfolk, VA; Richmond, VA; Rockville, MD; and Tampa.

Mr. Goodman is past director, Adjusters International (1987–2002); and is a past president (1997–1998), board member (1980–present), and former chairman of the Professional Education Committee of the National Association of Public Insurance Adjusters (NAPIA).

He has attained Senior Professional Public Adjuster (S.P.P.A.) certification through The National Association of Public Insurance Adjusters (1988) and is a Licensed Public Insurance Adjuster in the states of North Carolina, Georgia, Maryland, New York, Commonwealth of Massachusetts, Florida, New Jersey, California, Indiana, West Virginia, Commonwealth of Pennsylvania, and other states throughout the country. He presented “Boiler and Machinery Insurance—Broad Coverage That’s Too Often Misunderstood and Overlooked,” at the Risk and Insurance Management Society 2000 Conference & Exhibition in San Francisco and again for the 2001 Conference & Exhibition in Atlanta. He also presented “Mold Prevention & Remediation” for the Construction Specifics Institute, in Alexandria, VA, in February 2004 and was a workshop panelist for “Why Can’t We All Just Get Along?” during the Fifth Annual Windstorm Insurance Conference, February 2004, in New Orleans.

Mr. Goodman has testified as an expert witness in the following cases: *Santana Row Hotel Partners v Zurich American Insurance (CA)*; *Outlet Inn/Hotel Colonial America v. Zurich American Insurance (VA)*; *City of Baltimore v. Reliance Insurance (MD)*; *Summerville Electric v. Travelers (SC)*; *Service Merchandise v. Johnson & Higgins (Federal CT)*; *Bassins v. DC Property Insurance Facility (Washington, DC)*; *4 Times Square v. United Builders Supply (NY)* (deposition only) subrogation case; *Top Drawer v. Stanley Martin (MD)* (deposition only) subrogation case.

Mr. Goodman holds a bachelor of science degree in accounting from the University of Maryland, College Park, Maryland.

Getting the Most from Your Builders Risk Program

Presented By:

*Harvey M. Goodman,
President
Goodman-Gable-Gould/ Adjusters International
Rockville, Maryland
and
Anthony J. D'Amico,
Partner
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Loss Measurement and Damage
Valuation Issues, When
Your Project . . .

IS STRICKEN BY DISASTER



Builders Risk coverage has been, and will continue to be, the source of much controversy & confusion. The issues which arise during the course of the adjustment process are endless and often give rise to many losses that go partially uncompensated or to litigation over disputed coverages.

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LOSS & DAMAGE VALUATION

What does the Risk Manager/Policy Holder need to understand in order to minimize the risk of a partially covered loss and to insure a complete recovery?

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Interests of Covered Parties

- **Project Owner/Developer**
- **General Contractor**
- **Sub-Contractors**

6

Know the Project

- **Pre-Existing Structures at the Site**
- **Project Duration**
- **The Type of Structure Under Construction**
- **Any Other Entities with Interests in the Property**
- **Machinery & Equipment (cranes, forklifts, etc.)**
- **Underground Works**
- **Landscaping**
- **Off-Site Storage of Materials**

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Know the Policy

- **Does it Correspond to the Interests of the Parties and the Exposure?**
- **Is the Policy Consistent with the Construction Contract?**
- **Are There Sub-limits, Exclusions or Other Limitations Which are Inconsistent with the Exposure?**

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All Policies are NOT Created Equal

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Covered Property

The type of property covered under a Builders Risk Policy can vary significantly from policy to policy

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1. Covered Property

We will cover the building(s) or structure(s) described in the Declarations while in the course of construction, reconstruction or renovation provided a Limit of Insurance is shown in the Declarations.

Covered property includes:

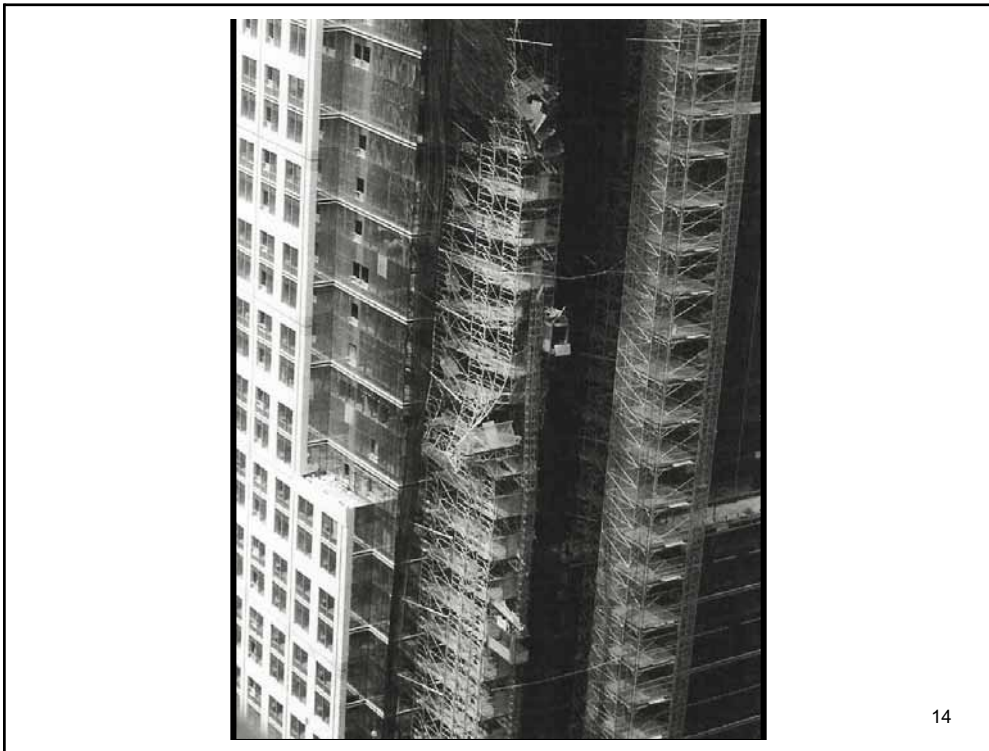
- a. Property of every kind and description that you own or are liable for that is intended to become a permanent part of the building or structure described in the Declarations. This includes building excavations.
- b. If not covered by other insurance, *temporary structures* on site, including cribbing, scaffolding and construction forms.
- c. Property in transit that is intended to become a permanent part of the building or structure described in the Declarations, providing a separate Limit of Insurance is shown for such coverage in the Declarations.

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Examples of Property Often NOT Covered Unless Endorsed

- Existing Structures
- Machinery, Tools or Contractors' Equipment *Not Intended to Become a Permanent Part* of the Building or Structure
- Scaffolding, Fences
- Temporary Structures, Office Trailers
- Underground Works
- Sidewalks & Paving
- Maps, Plans, Blueprints
- Trees, Shrubs & Plants
- Overhead & Profit
- Property of Others

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Replacement Cost:

What is it and how is it measured within the context of a builders risk exposure?

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Valuation & Loss Determination

- **Replacement Cost vs. Actual Cash Value**
- **Increased Costs to Complete**
 - Sequencing Inefficiency
 - Material Inflation
- **Overhead & Profit**

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ISO LOSS VALUATION PROVISION

6. Valuation

We will determine the value of Covered Property at actual cash value as of the time of loss or damage.

F. Additional Conditions

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions.

1. Mortgageholders

- The term mortgageholder includes trustee.
- We will pay for covered loss of or damage to buildings or structures to each mortgageholder shown in the Declarations in their order of precedence, as interests may appear.
- The mortgageholder has the right to receive loss payment, even if the mortgageholder has started foreclosure or similar action on the building or structure.
- If we deny your claim because of your acts or because you have failed to comply with the terms of this Coverage Part:

f. If we cancel this policy, we will give written notice to the mortgageholder at least:

- 10 days before the effective date of cancellation if we cancel for your non-payment of premium; or
- 30 days before the effective date of cancellation if we cancel for any other reason.

g. If we elect not to renew this policy, we will give written notice to the mortgageholder at least 10 days before the expiration date of this policy.

2. Need For Adequate Insurance

We will not pay a greater share of any loss than the proportion that the Limit of Insurance bears to the value on the date of completion of the building described in the Declarations.

Example No. 1 (Underinsurance):

When:	The value of the building on the date of completion is	\$ 200,000
	The Limit of Insurance for it is	\$ 100,000
	The Deductible is	\$ 500
	The amount of loss is	\$ 80,000

6. Valuation

We will determine the value of Covered Property at actual cash value as of the time of loss or damage.

e. If we pay the mortgageholder for any loss of or damage and deny payment to you because of your acts or because you have failed to comply with the terms of this Coverage Part:

- The mortgageholder's rights under the mortgage will be transferred to us to the extent of the amount we pay; and
- The mortgageholder's right to recover the full amount of the mortgageholder's claim will not be impaired.

At our option, we may pay to the mortgageholder the whole principal on the mortgage plus any accrued interest. In this event, your mortgage and note will be transferred to us and you will pay your remaining mortgage debt to us.

When:	The value of the building on the date of completion is	\$ 200,000
	The Limit of Insurance for it is	\$ 200,000
	The Deductible is	\$ 1,000
	The amount of loss is	\$ 80,000

The Limit of Insurance in this Example is adequate and therefore no penalty applies. We will pay no more than \$79,000 (\$80,000 amount of loss minus the deductible of \$1,000).

3. Restriction Of Additional Coverage - Collapse

If the Causes Of Loss - Broad Form is applicable to this coverage form, Paragraph C.2.1 of the Additional Coverage - Collapse does not apply to this coverage form.

4. Loss Payment

a. In the event of loss or damage covered by this Coverage Form, at our option, we will either:

- Pay the value of lost or damaged property;
- Pay the cost of repairing or replacing the lost or damaged property, subject to b. below;
- Take all or any part of the property at an agreed or appraised value; or
- Repair, rebuild or replace the property with other property of like kind and quality, subject to b. below.

We will determine the value of lost or damaged property, or the cost of its repair or replacement, in accordance with the applicable terms of the Valuation Condition in this Coverage Form or any applicable provision which amends or supersedes the Valuation Condition.

- The cost to repair, rebuild or replace does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.
- We will give notice of our intentions within 30 days after we receive the sworn proof of loss.
- We will not pay you more than your financial interest in the Covered Property.

ISO LOSS PAYMENT PROVISIONS

(2) Give us prompt notice of the loss or damage, including a description of the property involved.

(3) As soon as possible, give us a description of how, when and where the loss or damage occurred.

(4) Take all reasonable steps to protect the Covered Property from further damage, and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim. This will not increase the Limit of Insurance. However, we will not pay for any subsequent loss or damage resulting from a cause of loss that is not a Covered Cause of Loss. Also, if feasible, set the damaged property aside and in the best possible order for examination.

(5) At our request, give us complete inventories of the damaged and undamaged property. Include quantities, costs, values and amount of loss claimed.

(6) As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records.

Also permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.

(7) Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.

(8) Cooperate with us in the investigation or settlement of the claim.

b. We may examine any insured under claim, while not in the presence of any other insured, and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records, in the event of an examination, an insured's answers must be signed.

Loss Payment

a. In the event of loss or damage covered by this Coverage Form, at our option, we will either:

- Pay the value of lost or damaged property;

(2) Pay the cost of repairing or replacing the lost or damaged property, subject to b. below.

(3) Take all or any part of the property at an agreed or appraised value; or

(4) Repair, rebuild or replace the property with other property of like kind and quality, subject to b. below.

We will determine the value of lost or damaged property, or the cost of its repair or replacement, in accordance with the applicable terms of the Valuation Condition in this Coverage Form or any applicable provision which amends or supersedes the Valuation Condition.

b. The cost to repair, rebuild or replace does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.

c. We will give notice of our intentions within 30 days after we receive the sworn proof of loss.

d. We will not pay you more than your financial interest in the Covered Property.

e. We may adjust losses with the owners of lost or damaged property if other than you. If we pay the owners, such payments will satisfy your claims against us for the owners' property. We will not pay the owners more than their financial interest in the Covered Property.

f. We may elect to defend you against suits arising from claims of owners of property. We will do so at our expense.

g. We will pay for covered loss or damage within 30 days after we receive the sworn proof of loss, if you have complied with all of the terms of this Coverage Part and:

- We have reached agreement with you on the amount of loss; or
- An appraisal award has been made.

5. Recovered Property

If either you or we recover any property after loss settlement, that party must give the other prompt notice. At your option, the property will be returned to you. You must then return to us the amount we paid to you for the property. We will pay recovery expenses and the expenses to repair the recovered property, subject to the Limit of Insurance.

Key Considerations in the Measurement of Replacement Value

- State of Completion / Installed Costs
- Duration of Project
- Market Conditions
 - Price Changes
 - Availability of Labor
- Resequencing of Contractors
- Seasonal Issues

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APPLICATION AND CERTIFICATION FOR PAYMENT		AIA DOCUMENT G702	PAGE ONE OF	PAGES
TO OWNER:	PROJECT:	APPLICATION NO:	Distribution to:	
		PERIOD TO:	<input checked="" type="checkbox"/> OWNER	
		PROJECT NOS:	<input checked="" type="checkbox"/> ARCHITECT	
		Contract Date	<input type="checkbox"/> CONTRACTOR	
FROM CONTRACTOR:	VIA ARCHITECT:			

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM		\$	6,231,400.00 ✓
2. Net change by Change Orders		\$	366,240.00 ✓
3. CONTRACT SUM TO DATE (Line 1 + 2)		\$	6,597,640.00 ✓
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)		\$	3,514,053.00 ✓
5. RETAINAGE:			
a. 10 % of Completed Work (Column D + E on G703)	\$	351,405.30 ✓	
b. % of Stored Material (Column F on G703)	\$		
Total Retainage (Lines 5a + 5b or Total in Column I of G703)			
6. TOTAL EARNED LESS RETAINAGE (Line 4 less Line 5 Total)		\$	3,162,647.70 ✓
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)		\$	2,999,816.70 ✓
8. CURRENT PAYMENT DUE		\$	162,831.00 ✓
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)		\$	3,434,992.30 ✓

CHANGE ORDER SUMMARY		AIA
Total changes approved in previous months by Owner		
Total approved this Month		
TOTALS		
NET CHANGES by Change Order		

AIA DOCUMENT G702 - APPLICATION AND CERTIFICATION FOR PAYMENT - REVISION 10/01/01
Users may obtain validation of this document by requesting a completed AIA Document B401 - Certification of Document's Authenticity from the Licensee.

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STATEMENT OF LOSS		
Insured:	ABC Corporation	
Date of Loss:	1/1/06	
BUILDING		
Loss - Agreed figures with Contractor & Insured		
A. General Requirements	371,076.55	371,076.55
B. Demolition	373,433.52	373,433.52
C. Site Work	13,890.15	13,890.15
D. Concrete	36,622.00	36,622.00
E. Masonry	319,667.00	319,667.00
F. Metals	206,580.43	206,580.43
G. Woods & Plastics	915,465.68	915,465.68
H. Thermal & Moisture Protection	94,126.00	94,126.00
I. Doors & Windows	46,766.49	46,766.49
J. Finishes	184,867.00	184,867.00
K. Specialties	7,500.00	7,500.00
L. Conveying Systems	64,886.09	64,886.09
M. Mechanical	690,579.00	690,579.00
N. Electrical	548,500.00	548,500.00
	Subtotal	3,873,959.91
Overhead on Builder's Risk work - 10%		392,395.99
Insurance		15,107.25
Business License		9,529.22
Building Permit		21,704.96
Bond		21,813.49
Builder's Risk (Back-up to owner's policy)		876.90
Profit - 10%		436,269.73
	Total	4,771,657.45
O. Additional Costs Incurred by Insured		
Structural Engineering - Engineer on Record	24,000.00	
Architectural Fees - Architect on Record	80,000.00	
Parking Lot Rental - 828 & 838 W. Grace Street	13,033.96	
Plans & Drawings	7,739.00	
Travel expenses	60,000.00	
Misc. Expenses	793.00	
Construction Management Fee	269,862.58	
Total Other Costs	455,428.54	455,428.54
TOTAL BUILDING LOSS		5,227,085.99

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Actual Cash Value

- Replacement Cost Less Depreciation
- Market Value
- Impact on Recovery

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Other Considerations

- Expediting Costs
- Additional Contractors Costs

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Typical Additional/ Extra Costs

- Overtime Labor – Weekend & Holidays
- Slotting Charges for Material Purchase
- Express Freight & Transportation
- General Conditions
 - Temporary Heat & Utilities
 - Temporary Structures & Enclosures
 - Equipment Rental

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Extra /Additional Costs

What Could Go Wrong

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Extension of Coverage

15. ADDITIONAL CONTRACTORS COST

Should there be a significant delay, due to a covered loss, and “ABC Company” must move their equipment and employees from the site to another site, this sub-limit will provide coverage for the additional costs associated with transporting the equipment and workers back to the site.

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Code, Law & Ordinance
Coverage

Is it Necessary?

Will You Need It?

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YES!

- Frequent Changes & Upgrades to Municipal & State Codes
- Post Loss Code Compliance

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Law and Ordinance

- Loss Measurement
- Damaged Property
- Undamaged Property
- Actual Costs Incurred
- Relocation of Existing Site

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TYPICAL EXCLUSIONARY LANGUAGE

B. Exclusions

1. We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

a. Ordinance Or Law
The enforcement of any ordinance or law:

- (1) Regulating the construction, use or repair of any property; or
- (2) Requiring the tearing down of any property, including the cost of removing its debris.

This exclusion, Ordinance Or Law, applies whether the loss results from:

- (1) An ordinance or law that is enforced even if the property has not been damaged; or
- (2) The increased costs incurred to comply with an ordinance or law in the course of construction, repair, renovation, remodeling or demolition of property, or removal of its debris, following a physical loss to that property.

b. Earth Movement

- (1) Earthquake, including any earth sinking, rising or shifting related to such event;
- (2) Landslide, including any earth sinking, rising or shifting related to such event;
- (3) Mine subsidence, meaning subsidence of a man-made mine, whether or not mining activity has ceased;

(4) Earth sinking (other than sinkhole collapse), rising or shifting including soil conditions which cause settling, cracking or other disarrangement of foundations or other parts of realty. Soil conditions include contraction, expansion, freezing, thawing, erosion, improperly compacted soil and the action of water under the ground surface.

But if Earth Movement, as described in b.(1) through (4) above, results in fire or explosion, we will pay for the loss or damage caused by that fire or explosion.

(5) Volcanic eruption, explosion or effusion. But if volcanic eruption, explosion or effusion results in fire, building glass breakage or Volcanic Action, we will pay for the loss or damage caused by that fire, building glass breakage or Volcanic Action.

Volcanic action means direct loss or damage resulting from the eruption of a volcano when the loss or damage is caused by:

- (a) Airborne volcanic blast or airborne shock waves;
- (b) Ash, dust or particulate matter; or
- (c) Lava flow.

All volcanic eruptions that occur within any 168 hour period will constitute a single occurrence.

Volcanic action does not include the cost to remove ash, dust or particulate matter that does not cause direct physical loss or damage to the described property.

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TYPICAL LAW & ORDINANCE COVERAGE ENDORSEMENT

3. Ordinance or Law Coverage - Coverage for Loss to the Undamaged Portion of the Building

If a covered cause of loss occurs to covered real property shown in the Declarations, we will pay for loss to the undamaged portion of such property caused by enforcement of any ordinance or law that:

- a. Requires the demolition of parts of the same property not damaged by a covered cause of loss;
- b. Regulates the construction or repair of buildings, or establishes zoning or land use requirements at the described premises; and
- c. Is in force at the time of the loss.

This extension of coverage shall not increase any amounts or Limits of Insurance provided by this Coverage Section or the policy to which it is attached.

4. Ordinance or Law Coverage - Demolition Cost and Increased Cost of Construction Coverages

a. If a covered cause of loss occurs to covered real property, we will pay:

- (1) The cost to demolish and clear the site of undamaged parts of the property caused by the enforcement of the building, zoning or land use law.
- (2) The increased costs to repair, rebuild or construct the property caused by the enforcement of building, zoning or land use law. When the building is repaired or rebuilt, it must be intended for similar occupancy as the current property, unless otherwise required by zoning or land use law.

We will not pay for increased construction costs until the property is actually repaired or replaced, at the same premises or elsewhere, and unless repairs are made as soon as reasonably possible after the loss or damage, not to exceed 2 years. We may extend this period in writing during the 2 years.

b. The most we will pay in any one occurrence under this Coverage Extension is:

- (1) The amount you actually spend to demolish and clear the site of the described premises; and
- (2) The increased cost of construction at the same premises or elsewhere, if required; or
- (3) \$ 100,000 whichever is less.

We will not pay for the increased cost of construction if the building is not repaired or replaced.

Source: Fireman's Fund Insurance





OTHER FACTORS IMPACTING VALUATION & RECOVERY

- Reporting Form vs. Completed Value
- Coinsurance

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Reporting Form vs. Completed Value

- **Completed Value**
 - Most Widely Used
 - 100% Co-Insurance Rate & Clause
 - Agreed Amount (Co-Insurance Should Never be Written Without an Agreed Amount Endorsement)
- **Reporting Form**
 - Periodic Reports of Value are Required
 - Helpful for Cash Flow Purposes
- **Reports Must Be Timely & Accurate**
 - Severe Penalties are Imposed for Late or Inaccurate Reports

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DELAY IN OPENING AKA SOFT COSTS

Additional Costs Incurred as a Result of a Delay in Completion of the Project Due to a Covered Cause of Loss

Soft Costs/Delay in Opening

- **Typical Exposures to be Considered:**
 - Real Estate Taxes
 - Interest
 - Consulting Fees
 - Legal, Accounting and Advertising / Marketing
 - Equipment Rental
 - Overhead / Extended General Conditions
 - Insurance
 - Refinance Charges
 - Architectural & Engineering

Soft Costs/Delay in Opening (cont.)

- Direct Costs – Non-Operational
- Developer Overhead/Extended General Conditions
- Leasing Fees/Re-Negotiation
- Refinance Charges
 - Letter of Credit
 - Remarketing of Bonds
- Equipment Rental
- Advertising and Promotional
- Others as Accepted by the Company

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SAMPLE DELAYED OPENING COVERAGE ITEMS

Loss of Earnings. Total revenue and other earnings derived from operations of the project less: (1) cost of materials and supplies consumed directly in manufacturing the product or supplying the services sold by the Insured; (2) services purchased from outsiders for resale which do not continue under contract; (3) charges and expenses which do not necessarily continue during the delay.

Loss of Rents. The actual loss of net rental income sustained as a direct result of delay but not exceeding the reduction in rentals less charges and expenses which do not necessarily continue or arise because of said delay.

General Overhead-Developer. General overhead and administration expenses incurred, including but not limited to additional clerical personnel, consultants' fees, temporary office space, additional security, and similar expenses.

Miscellaneous Operating Expenses. Miscellaneous operating expenses may include such items as general overhead and administrative expenses, advertising, taxes, and other similar expenses incurred as a result of the delay in completion.

Fixed Operational and Maintenance Expenses. Those costs incurred by the project owner whether or not the project is operating, less any income derived from the project operations. Such items include salaries, wages, taxes, maintenance, and other ongoing expenses which cannot be reasonably avoided during such delay.

Wheeling Charges. Those fixed cost payments due to another electric utility for availability to wheel power through that utility's transmission system which are due whether or not power is being generated by the project.

Additional Interest Expense. The additional interest that may be charged by lenders for the extension or renewal of interim financing necessary for the completion of the project.

Debt Service Payments. Interest payments and/or principal payments which become due and must be paid whether the project is operational or not.

Bond Interest. Bond interest payments which become due and must be paid whether the project is habitable or not.

continued

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SAMPLE DELAYED OPENING COVERAGE ITEMS (cont.)

Construction Loan Fees. Additional commissions or loan fees incurred in rearranging financing necessary for completion of the project.

Refinancing Charges. The additional costs expended by the insured solely to obtain new financing for the project, should the financing expire or fail to be renewed.

Fees for Letters of Credit, Trustee, Remarketing of Bonds. Additional costs incurred in the event it becomes necessary to refinance the project as a result of the delay in completion.

Real Estate Taxes. Additional realty taxes and other assessments actually incurred for the period of time that construction has been extended beyond the scheduled completion date.

Marketing Expenses. Additional advertising, promotion, and such additional expenses as are incurred as a result of delay in scheduled completion of the project.

Legal/Professional Fees. Additional accounting work incurred in renewing or restructuring the financing, other professional fees as a result of additional costs and expenses of the project and additional legal work incurred in renegotiating and preparing revised contracts and other documents.

Leasing Expenses. Additional costs of renegotiating and preleasing of the project as a result of a delay in the scheduled opening date.

Founders Fee Refunds. Founders fee refunds are defined as deposits made by prospective occupants, and a refund of said deposits may become necessary if the project is delayed. If payment by the insurers is necessary for founders fee refunds, any new founders fees later collected by the insured on the same property will be applied to reduce the loss payment made under the policy.

Insurance Premiums. Additional premiums charged under insurance policies for renewing or extending policies to continue coverage during the period of delay.

BUSINESS INCOME / RENTAL VALUE

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Business Income vs. Soft Costs Mutually Exclusive or Not?

- **Business Income Covers Only Those Earnings That Would Have Been Generated Had the Loss Not Occurred**
- **Soft/Delay Costs Provide for the Additional Cost Irrespective of Anticipated Earnings**

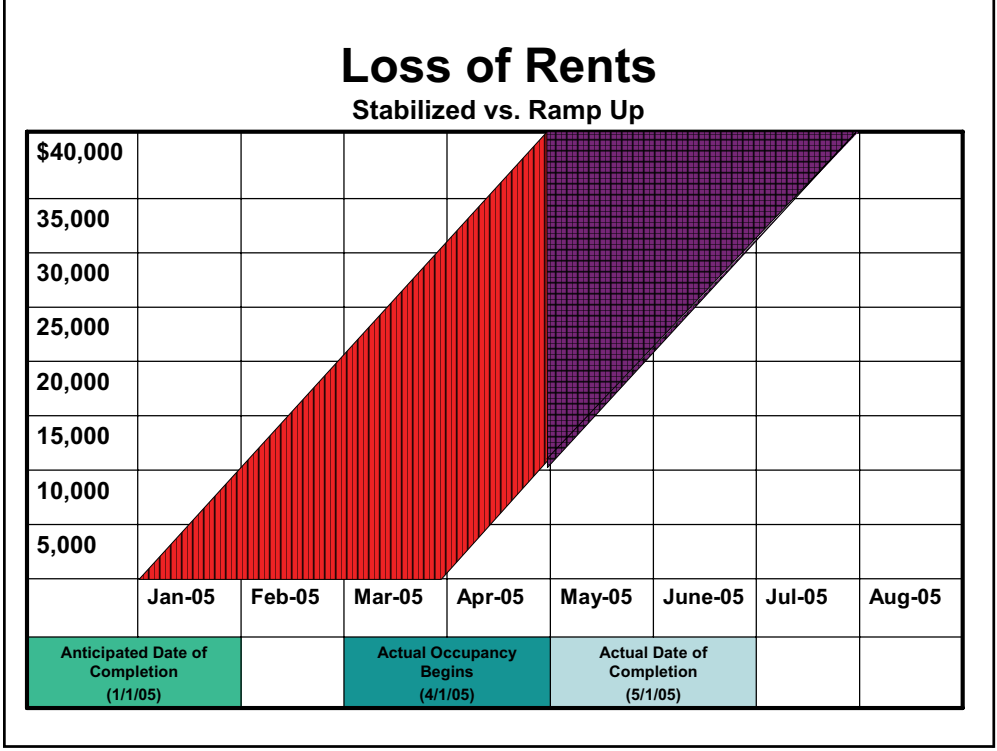
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D. Rental Value/Rental Income

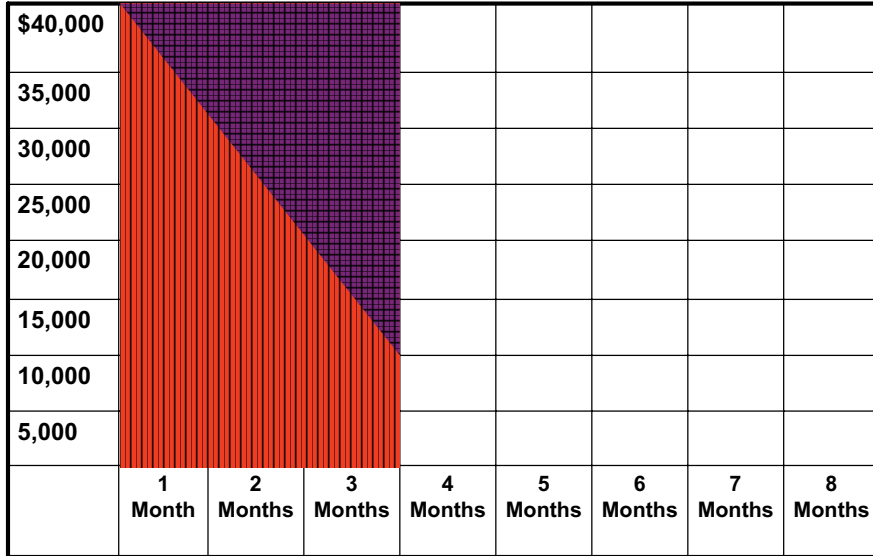
- (1) Rental value loss sustained by the Insured resulting directly from the necessary untenability caused by loss, damage, or destruction by any of the perils covered herein during the term of this policy to real or personal property as described in Clause 7A, but not exceeding the reduction in rental value less charges and expenses which do not necessarily continue during the period of untenability.
- (2) If the Insured is the lessor, for the purposes of this insurance, "rental value" is defined as the sum of:
 - (a) the total anticipated gross rental income from tenant occupancy of the described property as furnished and equipped by the Insured, and
 - (b) the amount of all charges which are the legal obligation of the tenant(s) and which would otherwise be obligations of the
 - (c) the fair rental value of any portion of said property which is occupied by the Insured.
- (3) If the Insured is the lessee, rental value shall be the determined rental which the Insured is obligated to pay (including ground rents, accrued charges, real estate taxes and interest if the Insured shall be liable therefor) less such charges and expenses as do not necessarily continue.
- (4) Experience of the Business
 - (a) In determining the amount of rental value covered hereunder for the purpose of ascertaining the amount of loss sustained, due consideration shall be given to the rental experience before the date of damage or destruction and to the probable experience thereafter had no loss occurred.
 - (b) With respect to alterations, additions, and property while in the course of construction, erection, installation, or assembly, due consideration shall be given to the available rental experience of the business after completion of the construction, erection, installation or assembly.

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Source: Royal Insurance



Loss of Rents Theoretical Stabilized vs. Ramp Up



REMINDER!

**ALL POLICIES ARE NOT
CREATED EQUAL**

SOFT COSTS

This endorsement modifies insurance provided under the Property Coverage Form, but only with respect to the insurance provided by separate endorsement for Builders Risk and/or Renovation Projects.

The following is added to Section B. 2. Covered Costs And Expenses:

Soft Costs Coverage

1. This policy is extended to apply to the actual Soft Costs, as described in 2. below, which the Insured incurs due to a delay in the completion of the construction or renovation project at any Construction Site or Renovation Site to which the Builders Risk or Renovation Projects coverage under this policy applies. The delay must be caused by direct physical loss or damage to:

- a. Builders Risk Property, as defined in the Builders Risk endorsement, when applicable; or
- b. Renovation Project Property, as defined in the Renovation Projects endorsement, when applicable;

caused by or resulting from a Covered Cause of Loss. This coverage applies to the Soft Costs the Insured incurs during the period of time that begins on the date the construction or renovation project would have been completed had there been no direct physical loss or damage to the property, and continues for the shorter of the following periods:

- a. The period of time between:
 - (i) The date of direct physical loss or damage to the Builders Risk Property or Renovation Project Property; and
 - (ii) The date the property should have been repaired, rebuilt or replaced with reasonable speed and similar quality;
- or
- b. The period of time that the completion of the construction or renovation project is actually delayed. This period of time will not be limited by the expiration date of this policy.

2. Soft Costs, as used in this coverage, means the necessary and reasonable additional expenses the Insured incurs for any of the following that are over and above the expenses the Insured would have incurred had there been no direct physical loss or damage:

- a. Interest on money borrowed to finance construction or repair;
- b. Real estate and property taxes;
- c. Architect, engineering and consultant fees;
- d. Legal and accounting fees;
- e. Advertising and promotional expenses; and
- f. Rental or lease of construction equipment.

3. The Company will also pay for the actual Soft Costs which the Insured incurs due to a delay in the completion of the construction or renovation project at any Construction Site or Renovation Site to which the Builders Risk or Renovation Project Coverage under this policy applies, caused by a civil authority action that prohibits access to the Construction Site or Renovation Site. The civil authority action must be due to direct physical loss or damage to property at locations other than the Construction Site or Renovation Site, caused by or resulting from a Covered Cause of Loss.

This civil authority action coverage applies to the Soft Costs the Insured incurs during the period of time that begins on the date the construction or renovation project would have been completed had there been no civil authority action prohibiting access to the Construction Site or Renovation Site, and continues for the shorter of the following periods:

- a. The period of time access to the Construction Site or Renovation Site is prohibited by the civil authority action, subject to a maximum of 30 days or, if an hourly deductible applies to Soft Costs coverage, subject to a maximum of 30 days after the hourly deductible is exhausted; or
- b. The period of time that the completion of the construction or renovation project is actually delayed. This period of time will not be limited by the expiration date of this policy.

Source: Travelers Insurance Company

"Soft Costs" & "Rents" Endorsement

These terms in quotations (" ") are defined in paragraph 2.

1. In consideration of the additional premium charged and subject to the terms and conditions of the policy to which this endorsement is attached, this policy is extended to cover the "Soft Costs" and "Rents" resulting directly from a delay in completion of the construction project beyond the "Planned Date of Completion", where such delay is the direct result of a covered loss to insured property at the named project site during the period of Indemnity.
2. For the purposes of this insurance, the following definitions shall apply:
 - a) "Soft Costs" shall mean those expenses relating to the construction project identified below over and above those costs which would have been incurred had there been no direct physical loss or damage, consisting of the following:
 - extra construction costs incurred to continue construction and meet contract dates;
 - construction loan interest on money borrowed to finance construction or repair;
 - realty taxes and other assessments on the construction site accruing during the period of delay;
 - architect, engineering, and consultant fees;
 - legal and accounting fees;
 - insurance premiums;
 - license and permit fees;
 - title fees;
 - additional general overhead;
 - additional debt service payment;
 - additional bond interest;
 - additional refinancing charges;
 - additional construction loan fees;
 - b) "Rents" shall mean the actual loss or net rental income sustained less charges and expenses which do not necessarily continue during the period of delay.
 - c) "Planned Date of Completion" shall mean the date that construction would have been completed as shown on the most recent construction timetable existing on the date of loss or damage had there been no direct physical loss or damage.
3. This policy shall only cover at the project site described below:
Project Site: _____
4. The Company shall not be liable for more than the following amounts under this endorsement:
 - a) \$8,290,000 as respects "Soft Costs" in any one loss, disaster or casualty; and
 - b) Not Cov'd as respects "Rents" in any one loss, disaster or casualty
5. The Company shall not be liable for any loss hereunder unless the determined period of interruption arising out of one loss occurrence exceeds 14 days beyond the "Planned Date of Completion" and the liability shall exist only for the determined period of interruption in excess of the first 14 days beyond the "Planned Date of Completion".
Each loss occurrence shall mean an accident or occurrence or series of accidents or occurrences arising out of the one event.

Source: Vigilant Insurance Company

6. TESTING

A. Hot Testing (Broad Form)

8. SOFT COSTS/ADDITIONAL EXPENSE

Expenditures, during the Period of Indemnity, which would not have been incurred by the Insured if the Delay had not occurred;

B.

- A. Interest upon money borrowed to finance the contract work;
- B. Other as accepted by the Company.

C.

7. RENTAL INCOME

Revenues from rentals and leases not realized during the Period of Indemnity, which would have been earned by the Insured if the Delay had not occurred, less non continuing expenses.

8. SOFT COSTS/ADDITIONAL EXPENSE

Expenditures, during the Period of Indemnity, which would not have been incurred by the Insured if the Delay had not occurred,

- A. Interest upon money borrowed to finance the contract work;
- B. Other as accepted by the Company.

9. GROSS EARNINGS

The sum of:

- A. Total net sales value of production;
- B. Total net sales of merchandise;
- C. Other earnings derived from operations of the business, less the cost of

Source: Federal Insurance Company (A Chubb Insurance Company)

Key Factors To Be Considered In The Valuation Of Soft Costs

- The Anticipated Completion Date
- The Period of Time Required to Effect the Repairs
- The Actual Completion Date
- Policy Language
 - Some Forms Stipulate a Specific Date
 - Maximum Period of Indemnity Provision

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DEFINITIONS

FOR THE PURPOSE OF THIS ENDORSEMENT, THE FOLLOWING DEFINITIONS SHALL APPLY IN ADDITION TO THOSE OF THE POLICY:

1. **ANTICIPATED DATE OF COMPLETION***: The date stated in the Declarations of this Endorsement on which the work is scheduled to be completed for commencement of commercial operations or use and occupancy.
2. **DEDUCTIBLE PERIOD**: The period of time between the commencement of operations or use and occupancy and the commencement of commercial operations or use and occupancy.
3. **DELAY***: The period of time between the **ANTICIPATED DATE OF COMPLETION*** and the actual date on which commercial operations or use and occupancy can commence with the exercise of due diligence and dispatch.
4. **GROSS EARNINGS***: **GROSS EARNINGS*** not realized by the Named Insured during the **PERIOD OF INDEMNITY*** which would have been earned from the commencement of operations or use and occupancy of the work if the **DELAY*** had not occurred, consisting of:

The sum of :

 - A. Total net sales value of production;
 - B. Total net sales of merchandise;
 - C. Other earnings derived from operations of the business

Less the cost of :

 - D. raw stock from which such production is derived;
 - E. Supplies consisting of materials consumed directly in the conversions of such raw stock into finished stock or in supplying the service(s) sold by the Named Insured;
 - F. Merchandise sold, including packaging materials thereof; and
 - G. Service(s) purchased from outsiders (not employees of the Named Insured) for resale which do not continue under contract.

No other cost shall be deducted in determining **GROSS EARNINGS***.
5. **RENTAL INCOME***: Revenues from rentals and leases not realized during the **PERIOD OF INDEMNITY***, which would have been earned by the Named Insured if the **DELAY*** had not occurred, less non continuing expenses.

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Source: Zurich Insurance Company

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(2) Bills, invoices and other vouchers; and
(3) Debts, liens, contracts or leases.

2. The Company will reduce the amount of the Insured can resume "operations":

- Damaged or undamaged property (elsewhere; or
- Any other available sources of materials.

3. If the Insured intends to continue the Ins part, as quickly as possible. If the Insured quickly as possible, the Company will pay "operations" as quickly as possible.

G. DEFINITIONS
The following definitions are in addition to the:

- "Dependent Property" means property:
 - Supply materials or services to the Locations); With respect to Co-located, limited to water supply services, electricity, steam or gas;
 - Accept the Insured's products or services; or
 - Manufacture products for delivery to Locations); or
 - Attract customers to the Insured's business.
- "Exhibition" means the temporary display similar event at a location not owned or controlled by the Insured.
- "Operations" means:
 - The Insured's business activities on the Premises;
 - The Insured's employees performing their duties;
 - Executives, Department managers; and
 - Coverage provided by endorsement for the Insured's payroll expenses include:
 - Payroll;
 - Employee benefits, if directly related to the Insured's business;
 - ACA and Medicare payments;
 - Union dues; and
 - Worker's compensation premiums.
- "Period of Restoration"
 - Except as provided in paragraphs b. and c. below, "period of restoration" means the period of time that:
 - Begins with the date and time of direct physical loss or damage to property at the insured premises caused by or resulting from a Covered Cause of Loss; and
 - Ends on the earlier of the following:
 - The date when the property should be repaired, rebuilt or replaced with reasonable speed and similar quality; or
 - The date when business is resumed at a new permanent location.
 - The direct physical loss or damage by a Covered Cause of Loss is to any of the following property at premises to which this insurance applies:
 - New buildings or structures, whether complete or under construction;
 - Alterations or additions to existing buildings or structures; or
 - Machinery, equipment, supplies or building materials on or within 1000 feet of the premises that are used in the construction, alterations or additions, or incidental to the occupancy of the buildings;
 - Such direct physical loss or damage delays the start of "operations";

the "period of restoration" for Business Income or Rental Value will be the same length of time provided in a. above, but will not begin until the date when "operations" would have begun if the direct physical loss or damage had not occurred.
- When a number of hours is shown in the deductible item in the Supplemental Coverage Declarations for Business Income or Rental Value, the "period of restoration" will not begin until that number of hours immediately following the date and time the "period of restoration" would otherwise have begun, as described in a. and b. above.
- "Period of restoration" does not include any increased period required due to the enforcement of any ordinance or law that:
 - Regulates the construction, use, repair or replacement, or requires the tearing down of any property, except as provided under the Ordinance or Law – Increased "Period of Restoration" Additional Coverage Extension; or
 - Requires any Insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess, the effects of "pollutants".
- The expiration date of this policy will not cut short the "period of restoration".

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Source: Travelers Insurance Company

FOR THE PURPOSES OF THIS ENDORSEMENT, THE PERIOD OF INDEMNITY SHALL BE:

- ANTICIPATED PERIOD OF INDEMNITY: The number of calendar days stated in the Declarations of this Endorsement which are in excess of the DEDUCTIBLE PERIOD. The PERIOD OF INDEMNITY begins with the date upon which, had the loss or damage not occurred, the INSURED PROJECT would have been completed but not prior to the ANTICIPATED DATE OF COMPLETION. The PERIOD OF INDEMNITY ends on the earlier of the date on which the INSURED PROJECT is completed but not exceeding the length of time it takes with the exercise of due diligence and dispatch to rebuild, repair or replace such part of the property which has been lost or damaged to its condition immediately prior to the occurrence of the loss or damage or the number of calendar days specified. The PERIOD OF INDEMNITY hereunder shall not be limited or otherwise affected by the expiration, of the Policy.

6. SOFT COSTS (ADDITIONAL EXPENSES): Expenditures which are necessarily and reasonably incurred during the PERIOD OF INDEMNITY, that would not have been incurred by the Named Insured if the DELAY had not occurred.

- Interest upon
- Realty taxes
- Advertising and promotion
- Costs of additional construction
- Architectural and engineering fees
- Project administration
- Legal and accounting fees
- Insurance premiums
- Other, as accepted by the Company and scheduled in the Declarations of this Endorsement.

7. PERIOD OF INDEMNITY: The Period of Indemnity is the number of calendar days stated in the Declarations of this Endorsement which are in excess of the DEDUCTIBLE PERIOD. The PERIOD OF INDEMNITY begins with the date upon which, had the loss or damage not occurred, the INSURED PROJECT would have been completed but not prior to the ANTICIPATED DATE OF COMPLETION. The PERIOD OF INDEMNITY ends on the earlier of the date on which the INSURED PROJECT is completed but not exceeding the length of time it takes with the exercise of due diligence and dispatch to rebuild, repair or replace such part of the property which has been lost or damaged to its condition immediately prior to the occurrence of the loss or damage or the number of calendar days specified. The PERIOD OF INDEMNITY hereunder shall not be limited or otherwise affected by the expiration, of the Policy.

8. PERIOD OF INSURANCE: The PERIOD OF INSURANCE if different than the term of this policy shall be as stated in the Declarations of this Endorsement. It shall end earlier if and when the entire project or parts thereof are taken over into use by the INSURED.

ALL OTHER TERMS, CONDITIONS, LIMITATIONS AND EXCLUSIONS OF THIS POLICY SHALL REMAIN UNCHANGED.

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Source: Zurich Insurance Company

One Final Matter: Classification of Costs

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Classification of Costs & Its Impact on the Recovery



**Everything Is Not Always
What It Seems To Be**

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ABC Company		Schedule 1							
Loss Summary		Alternative #1			Alternative #2				
Description	Total Alt #1	Total Alt #2	Property Damage	Gross Earnings	Expanding Expense	Property Damage	Gross Earnings	Expanding Expense	Soft Costs
Project Management Payroll	201,800	201,800	Y	Y		Y			
Construction Management Payroll	528,378	528,378	Y	Y		Y			
Overhead Costs Incurred	278,583	278,583	Y	Y		Y			
On Site Expenses - 2/2/00 - 5/26/00	573,990	573,990	Y	Y		Y			
On Site Expenses - 5/27/00 - 8/30/00	191,095	191,095	Y	Y		Y			
On Site Expenses - 7/1/00 - 7/28/00	173,051	173,051	Y	Y		Y			
On Site Expenses - 7/29/00 - 8/25/00	77,448	77,448	Y	Y		Y			
Travel & Other Misc. Expenses	257,428	257,428	Y	Y		Y			
Construction Management Allocations	1,102,017	1,020,388	Y	Y			Y		Y
Project Management Payroll	178,308	6,309	Y	Y			Y		Y
Demolition & Debris Removal - Less Salvage	238,288	238,288	Y	Y		Y			
Sub Contractor Costs	40,882	40,882	Y	Y		Y			
Fire Department - Equipment Replacement	26,571	26,571	Y	Y		Y			
Labor Overtime Premium Through May	505,442	505,442	Y	Y	Y	Y			Y
Labor Overtime Premium - June	248,554	248,554	Y	Y	Y	Y			Y
Labor Overtime Premium - July	214,181	214,181	Y	Y	Y	Y			Y
Labor Overtime Premium - August	238,091	238,091	Y	Y	Y	Y			Y
Electric - Premium Time	727,279	727,279	Y	Y	Y	Y			Y
Electric - OT/REG Time	2,385,703	2,385,703	Y	Y	Y	Y			Y
Increase in Indirects - Labor	11,557,658	8,804,004	Y	Y	Y	Y - CL	Y - ID	Y - CL	Y - ID
Profit	1,727,616	1,588,304	Y	Y	Y	Y	Y	Y	Y
Interest									
Total	23,454,475	21,287,553							

THE END

**Thank You For Taking
the Time Out of Your Busy
Schedule to Join Us**

Any Questions?