

2009 HOSPITALITY LAW CONFERENCE

INSURANCE FOR THE CONSTRUCTION PERIOD



**OCIPs, BUILDER'S RISK,
CONSTRUCTION DEFECT COVERAGE,
POLLUTION AND PROFESSIONAL
LIABILITY, AND MUCH MORE**



Presenters

Rich Clark – Managing Director – Hospitality Practice

Arthur J, Gallagher Risk Management Services, Inc

- 40 Years Experience in Hospitality and Real Estate
- Manages Gallagher's Hospitality Practice
- Hospitality Practice Group insures 3,000 Properties and 400,000 Rooms

Scott R. Whiteside – Executive Vice President

Gallagher Construction Services

- Manages Gallagher's Wrap-up Practice Group
- Noted Expert in Construction Risk Management Issues
- 36 Years Experience in Construction Industry



Presenters

Danny Golden – Vice President

Gallagher Construction Services

- Hospitality Industry Construction Specialist
- 20 Years Experience in Real Estate, Hospitality, and Construction Industries
- Risk Management Services Specialist



Construction Insurance

- Overview
- Types of Insurance
- Claim Scenarios



Overview of Risk Management

- Protection of Assets
- Risk Transfer
- Indemnity vs. Insurance



Protection of Assets

- Construction is Dangerous
 - Exposure to Workers
 - Exposure to Public
- Risk of Catastrophic Loss
- Deep Pockets – Who has them?



Risk Transfer

- Avoid Risk
- Control Risk
- Retain Risk
- Transfer Risk
 - Insurance
 - Contracts



Indemnity vs. Insurance

- Indemnity Protection –
 - Contractor's Equity
 - Insurance
- Indemnity – Broader Than Insurance
- Additional Insured Issues
 - Primary and Non-Contributing
 - Completed Operations



Builder's Risk [COC]

- Lender Requirements
- “All Risk” + EQ, Flood + Windstorm
- Owner, Lender, GC, Subs, Materialmen
- Labor + Material + Equipment
- Off – Site + Transit Exposures



BR – Notable Exclusions

- Existing Property
- Land
- Tools + Equipment
- Faulty Design, Materials and Construction
- Earth Movement + Flood [Water Damage]
- Pollution



Builder's Risk – Soft Costs

- **Business Interruption**
 - Lost Revenues Due to Delay in Opening from a Covered Claim
 - Extra Expense
 - Expediting Expenses



BR – Other Soft Costs

- Advertising Expense
- Legal + Accounting Fees
- Design + Engineering Fees
- Promotional
- Loan Interest
- Insurance Premiums
- Taxes
- Extended General Conditions



General Liability

Four Categories of CGL Coverage

- Premises + Operations
- Products + Completed Operations
- Contractual Liability
- Independent Contractor Liability



General Liability

- Contract Requirements
 - Limits of Liability
 - Terms + Conditions
 - Carrier Financial Strength
 - Additional Insured Requirements
- Claims Made vs. Occurrence



General Liability - Exclusions

- Subsidence
- Professional Liability
- Expected or Intended Loss
- Residential
- EIFS/Kitec Brass Plumbing



Limits of Liability

- Lender Requirements
- Industry Standards – Are There Any?
- Site Risk Assessment



Owners Liability Coverage

- Owner's Sole Negligence
- Owner's Comparative Negligence
- Contingent Professional Liability



OCIP vs. CCIP

- Issues with Contractor's Insurance
 - Low Limits
 - Less Stable Insurance Carriers
 - Unknown Exclusions [i.e. Residential]
 - Cost Fluctuations



OCIP – Solutions/Benefits

- One Insurer for all Contractors
- Common Terms + Conditions
- Known Costs Through Protect Term
- Coverage Through Statute
- Financially Strong Insurers



Project Profiles

- CGL only – Any Project Size
 - Mixed Use
 - Residential + For Sale
- CGL + Worker's Compensation
 - Projects > \$100 Million
 - Commercial Projects
 - Large Industrial Projects



Professional Liability - Options

- No Insurance
- Design Professional E + O
- Project Professional
- Owner Protective Professional Indemnity



Pollution Liability

- **Contractors Pollution Liability [CPL]**
 - BI/PD Cleanup from Covered Event
 - Sudden and accidental
 - Defense and Indemnity

- **Pollution Legal Liability [PLL]**
 - Mitigation of Existing Conditions
 - Sudden and Gradual Events
 - On-site and Off-site Coverage
 - Defense and Indemnity



Subcontractor Default Insurance

- Trade Name = Subguard
- Purchased by General Contractors
- Insures Against Subcontractor Defaults
- Funds Completion of Subs' Contractual Obligations
- Cost = 1%+ of Project Hard Costs



Claim Scenario - Facts

- Crane Drops a Load of Material
 - Three Workers Injured
 - Damage to Project + Materials
 - Punctured Fuel Tank
 - Fuel Runs into Storm Sewer
 - Spectators Inhale Fumes
 - Project is Delayed 30 Days



Claim Scenario -

- Three Workers Injured
 - Workers' Compensation and General Liability
- Damage to Project + Materials
 - Builder's Risk
- Punctured Fuel Tank – Equipment Ins.
- Fuel Runs into Storm Sewer - CPL
- Spectators Inhale Fumes - CGL
- Project is Delayed 30 Days – B'Risk



Construction Insurance

Thank You!