

TRENDS INVOLVING ALL RISKS COVERAGE & CLAIMS

from the
**POLICYHOLDER'S
PERSPECTIVE**

Presented by:

William “Chip” Merlin, Jr., Esq.

President, Merlin Law Group

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for:

Willis Re



All-Risk Coverage
is no longer all-risk
(and probably never has been).



All-Risk Coverage is no longer all-risk for three reasons:

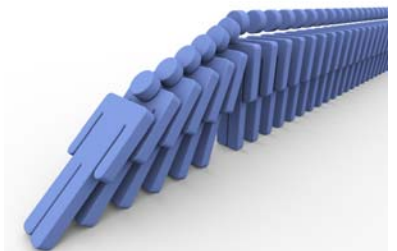
1. More exclusions



All-Risk Coverage is no longer all-risk for three reasons:

2. Anti-Concurrent Cause Language

- Does the claims department and their lawyers understand it?



All-Risk Coverage is no longer all-risk for three reasons:

3. Gaps are Covered in Endorsements

- Increases agent and policyholder anxiety at point of solicitation
- Is it worth it? Is it a good deal relative to other products?
- Promotes competitive shopping and breaking relationships



Is the Policy Really Worth Anything?

Blog by Chip Merlin, posted June 8, 2009

What is the value of insurance if it does not pay for insured losses?..... Companies are re-writing insurance policies to limit what is covered and excluding many losses that used to be covered under all-risk policies.....



Is the Policy Really Worth Anything?

Blog by Chip Merlin, posted June 8, 2009

California case of *Freedman v. State Farm Ins. Co.*, 173 Cal. App. 4th 957 (Cal. App. 2d Dist. 2009).

Here are the facts:

“In or about 2000, the Freedmans' home was repiped, and an upstairs bathroom was remodeled, including the replacement of drywall to cover the new piping. On or about August 12, 2005, ‘extensive water leakage’ was discovered in the upstairs bathroom wall. One wall was discolored and wet. The drywall fell apart on touch and mold was seen on pieces of the wall. The tile floor was wet and the ceiling immediately downstairs was wet and soft.”



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Here are the facts:

“When the drywall was removed, it was discovered that a nail that had been used to hang the drywall had penetrated entirely through a pipe. ‘The pipe was corroded around the points of entry of the nail, and water was release[d] through that area of corrosion.’ A damage restoration company discovered mold both upstairs and downstairs. On or about August 15, 2005, the Freedmans submitted a claim to State Farm. ***State Farm conducted an inspection and, on or about August 25, 2005, denied the claim.***”



Is the Policy Really Worth Anything?

Blog by Chip Merlin, posted June 8, 2009

....The lesson to policyholders and the purchasers of insurance is that the small print is reserved for the policy because **most would not purchase the product if it accurately advertised accidental losses would not be covered....**

The true nature of the insurance company is determined by the coverage sold and the performance of the claims department....



Is the Policy Really Worth Anything?

Blog by Chip Merlin, posted June 8, 2009

.... The Court upheld State Farm's denial

....Are there insurers that offer better protection?

Yes. Policyholders should ask their agents that question and should seek alternatives from truly independent agents. After all, if you have a great rate from your insurer, but you collect less or not at all, how truly affordable is that type of insurance? Can you say it has the value that provides peace of mind or a sense of security?....



Is State Farm Really Worth Anything?

Blog by Chip Merlin, posted June 8, 2009

Comment from **Mark Goldwich**, June 14, 2012

*“State Farm stands on language that says plumbing losses are excluded if they occur ‘over a period of time.’ There is no such thing as a plumbing loss that does NOT occur ‘over a period of time’, and the phrase is not defined. **So, why don't they simply say plumbing losses are not covered?** Also, State Farm routinely pays for (covers) pipe leaks. In other words, they pick and choose which they feel like paying for, with no more rhyme or reason than the whim of the adjuster or manager on that given day. If they don't want to cover water losses, they should just say so, and reduce the premium accordingly. Ah, maybe that's it...they want the premiums, and the ability to decide which claims they will pay for. Pretty slick.”*



No Standard Product

Standard forms are increasingly non-standard



No Standard Product

Manuscript forms are increasingly offered by agents with trade or industry market share



No Standard Product

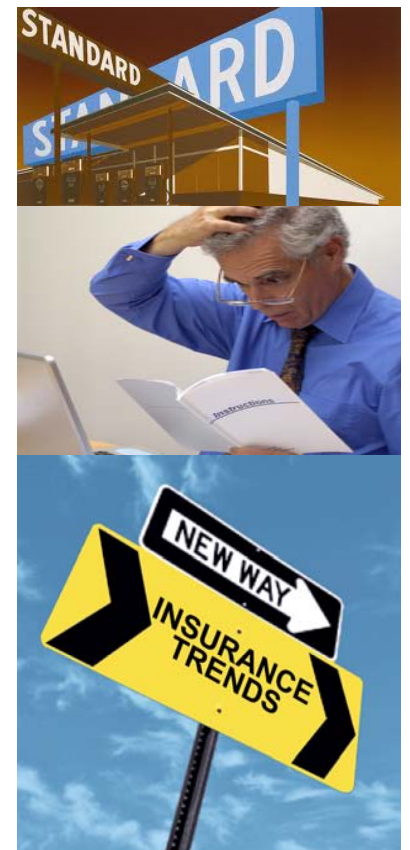
Sophisticated purchasers share information, and look for agents providing the broad coverage needed



No Standard Product

Unsophisticated purchasers have no clue

- **Price and relationship of ignorance**



What Policyholders Want Product and Service Wish List

- Best price
- Broadest terms & conditions
- Capacity
- Fast turnaround time



What Policyholders Want Product and Service Wish List

- Lowest deductibles w/little “skin in game”
- Stop asking for more information!
- All my premium returned if project financing falls apart



What Policyholders Want Broadest Terms and Conditions

- Bid stage: spin wheels on builders risk quotes—24-hour turnaround
- Quote validity: Good for 365 days?
- Award stage: will your markets respond to the unique needs that continually change with lender requirements?
- Claim stage: is my policy broad enough to cover my loss? Partial payment? What coverage ambiguities?



What Policyholders Want

Policyholders Drive Capacity (But Don't Know It)

- The contractor, developer, owner, municipality, or lender may have more influence on the market than you think!
- **Why?** The better the underwriting information—the better the deal! Brokers should start asking for more information!
- The better the sustained relationship—the better the deal. Build on that relationship.



What Policyholders Want

Policyholders Drive Capacity (But Don't Know It)

- Meet with you're broker and underwriters (and reinsurers)—as the most successful insurance placements result and tend to avoid ambiguity later including claim ambiguity.
- Policyholders need help obtaining information; showing their broker and underwriters can help! Leverage relationships across business lines of insurance and maybe the banking biz as well!



What Policyholders Want More of what they want

- Catastrophe cover/limits without restrictions
- Builders risk exposures
 - Distinct phases represent vulnerability & values on site
 - Concentrated risk (vertical construction)
 - Civil linear construction (horizontal construction)
- Builders risk positive/negative
 - Built to current codes to withstand CAT
 - Stage of project vulnerability
- Financial rating agencies impact on placement



What Policyholders Want What they **DO NOT** want

- Instability/Financial failure of insurer
- Slow reaction to claims
- Many questions at multiple times
- Slow or no service response
- Departure of “trusted” broker underwriter to another shop
- Multiple contacts



What Policyholders Want

How to achieve what they want

- Establishing policyholder/lender needs
 - Separating fiction from market reality
 - Get to know the risk management team
 - Have client-focused discussions
- Service, service, service
 - Execution
 - Staff competency--experts in subject matter
 - Integrity
 - Training needs in the industry for all parties
- Establishing enduring partnerships even after a claim



Inconsistencies & Coverage Gaps

- Brokers do not offer on terms demanded by agent
- Agents do not get offered terms until after purchase
- Willis has reputation scorecard for claims
 - How about for excess underwriters? (There is an opportunity for agents and underwriters to exploit this recurrent problem).



Inconsistencies & Coverage Gaps

The current reality-

- Coverage is bound without final form
- Time constraints & flexibility
- A coverage tower is constructed
 - Primary & excess layers
 - Multiple participants within each layer

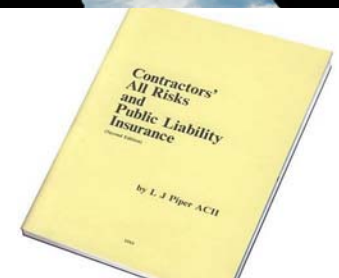


Inconsistencies & Coverage Gaps

Sample Layer Breakdown

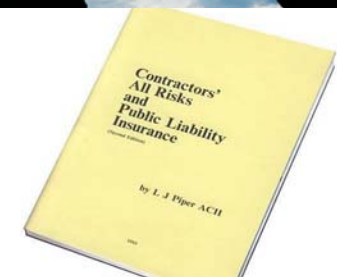
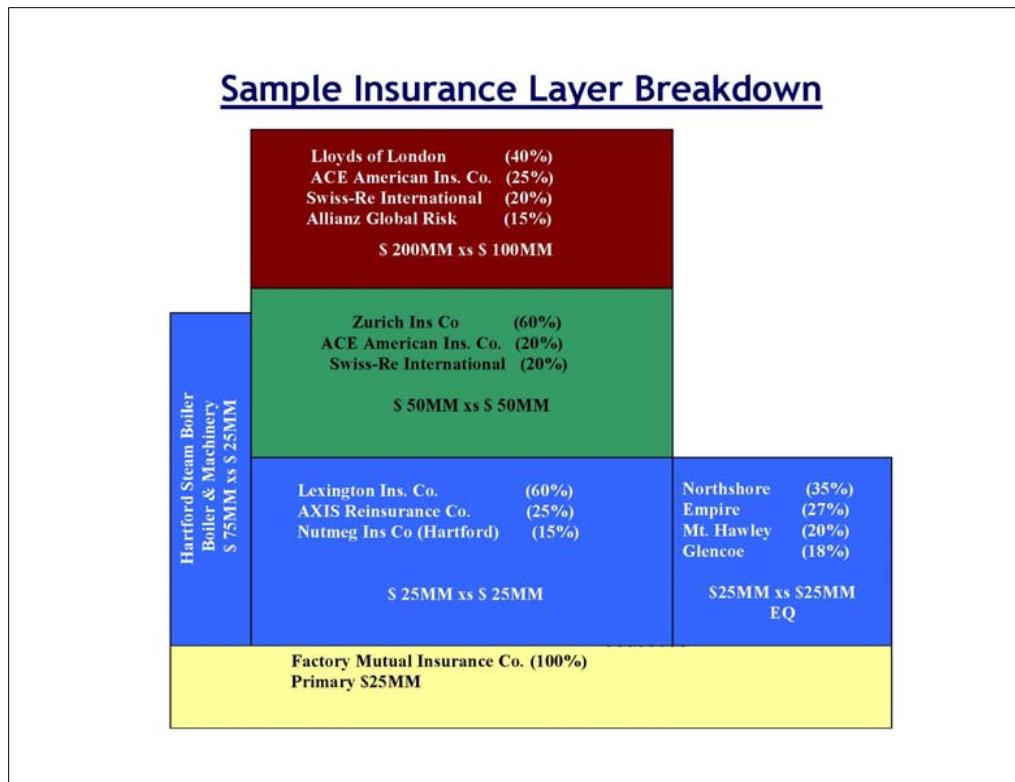
Sample Insurance Layer Breakdown

<u>Layer</u>	<u>Carrier</u>	<u>Participation</u>
1st - \$25m xs \$2.5m	Factory Mutual Insurance Company	100%
2nd - \$25m xs \$27.5m	Global Excess Partners	30%
	Commonwealth Insurance Company	20%
	American Alt. Insurance Company	20%
	Essex Insurance Company	20%
	Arch Specialty	10%
3rd - \$47.5m xs \$52.5m	AXIS Surplus Insurance Company	48.421%
	Crum & Forster Specialty	4.737%
	Swiss RE	5.263%
	Essex Insurance Company	5.263%
	Arch Specialty	15.789%
	Westport Insurance Company	10.526%



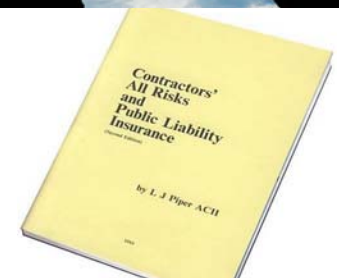
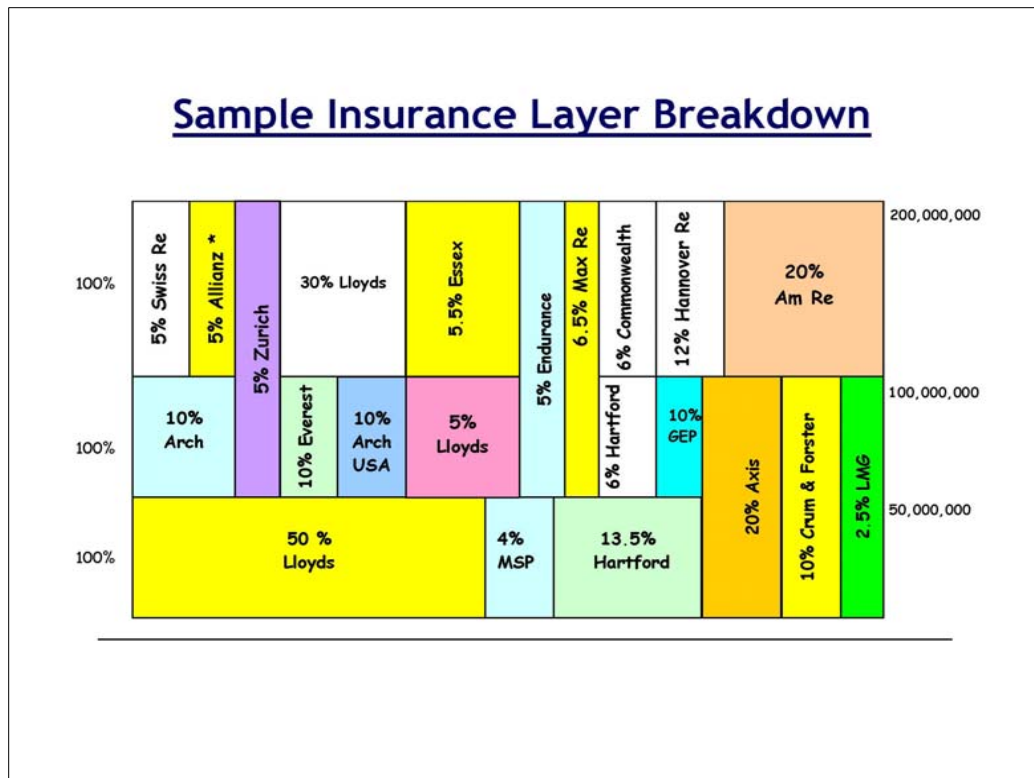
Inconsistencies & Coverage Gaps

Sample Layer Breakdown



Inconsistencies & Coverage Gaps

Sample Layer Breakdown



Inconsistencies & Coverage Gaps

General problem of non-concurrencies

- There is a “lead” primary policy (manuscript or standard form)
- Others “follow form”
- Except for the exceptions



Inconsistencies & Coverage Gaps

General problem of non-concurrencies

- Inconsistencies--problems waiting to happen
- Non-concurrencies are usually not noticed until after coverage is bound
- Often ignored until a claim occurs



Inconsistencies & Coverage Gaps

General problem of non-concurrencies

“As demonstrated by the jury verdicts concerning...the World Trade Center (disaster)...the devil is often in the details with respect to the placement of a complex, multi-layer insurance coverage program. Seemingly minor differences in standard form insurance policies can have drastic consequences as to scope of available coverage.”

-Insurance Coverage Disputes,
Case Study: World Trade Center
Coverage Litigation



Inconsistencies & Coverage Gaps

Top 4 policy inconsistencies

Usually caused by an excess or non-leader insurer adding its own endorsements...



TOP 4



Inconsistencies & Coverage Gaps

#1 Inconsistent dispute clauses

- Some policies have arbitration clauses, & some do not
- Some arbitration clauses provide venue in Bermuda, some provide it elsewhere
- Some clauses provide for a three-person arbitration panel, some provide for one person
- Other inconsistent arbitration clause language
- Claim is in dispute at all levels-what to do?



TOP4



Inconsistencies & Coverage Gaps

#2 Inconsistent misc. clauses

- Some policies add their own conditions endorsements
- Inconsistent treatment of POLs (need to be extended in writing? Timing? Upon request?)
- Inconsistent treatment of EUOs (allowed vs. not mentioned)



TOP4



Inconsistencies & Coverage Gaps

#2 Inconsistent misc. clauses

- Inconsistent appointment of a specific independent account adjuster
- Inconsistent appraisal clauses
- Inconsistent suit limitations periods (12 mos.)



TOP4



Inconsistencies & Coverage Gaps

#3 Inconsistent valuation clauses

- Some policies define valuation separately
- Many policies define ACV as including depreciation, others are silent (allowing for the broad evidence rule)
- Some policies have 2-year limit to replace the property to collect depreciation withheld, others do not
- Some policies have 2-year limit for repairs to collect for ordinance and law/code others do not



TOP4



Inconsistencies & Coverage Gaps

#4 Inconsistent business interruption & extra expense clauses

- Many policies have their own BI/EE endorsement
- Some policies define BI as gross revenues minus discontinued expenses, some define BI as net profit plus continuing expenses
- Inconsistent definitions of the BI period
- EE-some policies take total of expenses on ledger before vs. after loss; some policies define EE as those expenses to “temporarily continue” business



TOP4



Inconsistencies & Coverage Gaps

Other policy gaps

- If there are separate policy forms among insurers, the sky is the limit
- Anything & everything could be inconsistent, causing gaps or conundrums



Inconsistencies & Coverage Gaps

More gaps in the process

- Even if there are no substantive gaps in policy language, there still may be gaps in the adjustment process
 - the insurance adjuster switches in the middle of adjustment
 - the lower layer does not share or report information to upper layers
 - the first layer tenders limits and the next layer is left in the dark-now what?
 - possible new set of experts



Inconsistencies & Coverage Gaps

More gaps in the process

- Different insurers have different interpretations of the same
 - language
 - facts
 - valuation
 - Calculation of a % deductible
- Insurers should improve coordination and consistency



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Case Study Questions & Answers



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Please note that case outcomes will vary, depending on jurisdiction



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Case #1 Facts:

A Builders Risk policy is issued for a condominium construction project in Illinois. The limits of insurance include an Earth Movement Limit of \$2.5 million and a Soft Costs and Special Time Element limit of \$3.3 million.

The Earth Movement provision states:

Earth Movement Limit of Insurance means the most we will pay for 'loss' in any one occurrence caused directly or indirectly by 'earth movement,' regardless of any other cause or event that contributes concurrently or in any sequence to the 'loss.'



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Case #1 Facts:

Under Soft Costs, the policy states:

We will pay your “soft costs” during the period of delay in completion. Such soft costs must result from “loss” to Covered Property from any of the Covered Causes of Loss which delays the completion of the project beyond the “planned completion date.”

The project suffers a loss involving earth movement.



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Question:

Are the insureds limited to the \$2.5 million Earth Movement Limit of Insurance, or can they recover up to the \$3.3 million additional funds for soft costs resulting from the earth movement?



TRENDS

INVOLVING ALL RISKS COVERAGE & CLAIMS

Question:

Are the insureds limited to the \$2.5 million Earth Movement Limit of Insurance, or can they recover up to the \$3.3 million additional funds for soft costs resulting from the earth movement?

Answer:

In *One Place Condominium v. Travelers*, the Court applied Illinois law and found that although the policy limited a loss for earth movement to \$2.5 million, soft costs were listed in a separate line item and were not meant to be included in the Builders Risk hard cost limit of insurance. The insured could recover up to \$3.3 million in soft costs during the period of recovery in addition to the \$2.5 million damage to the covered property.



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INVOLVING ALL RISKS COVERAGE & CLAIMS

Case #2 Facts:

During the construction of an apartment building in Florida, faulty workmanship results in water intrusion which damages the building exterior and interior finishes, walls and ceiling.

The Builders Risk policy contains a coverage exclusion for faulty workmanship:

We will not pay for loss or damage caused by or resulting from...faulty workmanship....But if loss or damage by a Covered Cause of Loss results, we will pay for that resulting loss or damage.



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INVOLVING ALL RISKS COVERAGE & CLAIMS

Question:

Can the insured recover the cost to repair the faulty workmanship?



TRENDS

INVOLVING ALL RISKS COVERAGE & CLAIMS

Question:

Can the insured recover the cost to repair the faulty workmanship?

Answer:

No.



TRENDS

INVOLVING ALL RISKS COVERAGE & CLAIMS

Question:

Can the insured recover the cost to repair the faulty workmanship?

Answer:

No.

Question:

Can the insured recover for the water intrusion damage to the building exterior and interior?



TRENDS

INVOLVING ALL RISKS COVERAGE & CLAIMS

Question:

Can the insured recover the cost to repair the faulty workmanship?

Answer:

No.

Question:

Can the insured recover for the water intrusion damage to the building exterior and interior?

Answer:

Yes. Applying Florida law, ensuing losses that resulted from the water intrusion are damages separate from work needed to fix the faulty workmanship that contributed to the loss.

(Bartram v. Landmark American Insurance Company)



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INVOLVING ALL RISKS COVERAGE & CLAIMS

Case #3 Facts:

A Builders Risk policy was issued for a condominium construction project. The Soft Costs, Extra Expense Endorsement stated:

Soft Costs— “We” pay for soft cost expenses that arise out of a “delay” resulting from direct physical loss or damage to a building or structure described on the Soft Cost Schedule that is caused by a covered peril....

Extra Expense— “We” cover only the extra expenses that arise out of the “delay” resulting from direct physical loss or damage to a building or structure described on the Soft Cost Schedule that is caused by a covered peril.



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INVOLVING ALL RISKS COVERAGE & CLAIMS

Case #3 Facts:

The “Property Covered” provision stated:

“We” cover the following property unless the property is otherwise covered, excluded or subject to limitations.

“We” cover direct physical loss caused by a covered peril to buildings and structures at the “jobsite” described on the “schedule of coverages” while in the course of construction, erection or fabrication. This includes:

1. materials and supplies that will become a permanent part of the buildings or structure;



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Case #3 Facts:

A supplemental coverage provision provided coverage for property located at storage locations. “storage locations” was not defined in the policy:

We cover direct physical loss...to materials and supplies that will become a permanent part of a covered building...while they are at a storage location.

The general contractor was included as an additional insured, and he entered into a subcontract with a concrete manufacturing facility to fabricate concrete panels for the project. A fire destroyed the manufacturing facility, and 55 finished concrete panels awaiting delivery were also destroyed. The facility was unable to manufacture any more panels for the project.



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INVOLVING ALL RISKS COVERAGE & CLAIMS

Question:

Can the insured collect the soft costs, extra expense and overtime caused by the loss of the concrete panels under the Soft Costs, Extra Expense endorsement?



TRENDS

INVOLVING ALL RISKS COVERAGE & CLAIMS

Question:

Can the insured collect the soft costs, extra expense and overtime caused by the loss of the concrete panels under the Soft Costs, Extra Expense endorsement?

Answer:

No. The concrete manufacturing facility was not included in the plain meaning of the term “storage location.” Mere fact that the panels were damaged post-production and pre-delivery does not transform a manufacturing facility into a storage location.

(151 First Side Associates v. Peerless Insurance Company)



TRENDS

INVOLVING ALL RISKS COVERAGE & CLAIMS

Case #4 Facts:

A condominium was under construction in Galveston, Texas, when Hurricane Ike struck, causing damage to the project. At the time of the storm, exterior walls were being erected and no work related to roofing or drywall had commenced.

The Builders Risk policy contained a Delay in Completion Endorsement which covered “delay in completion loss... caused by direct physical loss or direct physical damage to insured property.”

After settling hard and soft cost claims, the insured submitted a supplemental soft cost claim for the delay in starting roofing caused by increased demand for roofers following the storm and delay in completion of the interior drywall caused by the unavailability of Galveston officials to approve the project due to increased demand following Hurricane Ike.



TRENDS

INVOLVING ALL RISKS COVERAGE & CLAIMS

Question:

Are the losses in the supplemental soft cost claim covered under the Delay in Completion Endorsement?



TRENDS

INVOLVING ALL RISKS COVERAGE & CLAIMS

Question:

Are the losses in the supplemental soft cost claim covered under the Delay in Completion Endorsement?

Answer:

No. the policy defined Delay in Completion losses as those “caused by direct physical loss or direct physical damage to [the] insured property....” Because Hurricane Ike did not cause damage to the roof or interior drywall, the delays were not covered under that provision.

(Diamond Beach v. Lexington Insurance Company)



Thank you!

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