



Current Articles 2003 – April

Builders Risk

After several errors and omission claims against brokers effecting Builders Risk coverages, the areas of concern are similar and relate to certain clauses in the Broad Form or Named Perils Builders Risk coverage. It is the responsibility of the broker to analyse the requirements of the client and make the client aware of pertinent clauses, exclusions and available options.

The policy will cover scaffolding, falsework, forms etc. and also the value of landscaping, trees, shrubs provided that the value of these items is included in the limit of insurance. The limit, including these items, must be for the full completed value. The policy will not cover contractor's tools and equipment and these items whether owned or rented must be insured on a separate policy.

If your insurance program for your client includes coverage for flood and earthquake make sure that you endorse the Builders Risk for these extensions. There are special flood and earthquake extension endorsements designed for the Builders Risk.

The most important clause to make the client aware of is the **Cessation of Coverage**. Most clients will believe that since they have a 12 month Builders Risk that the coverage will continue until the policy expires. This occurred with an owner of a property and when the claim occurred after the building was being used commercially, coverage was denied and the broker was presented with a substantial E & O claim. The Cessation of Coverage clause states that the coverage will cease when the building is put to its intended use. If the Builders Risk is for the construction of a restaurant and when the building commences to be used as such, the Builders Risk must be replaced by a commercial building form. The exceptions to the intended use are only if such use is for office or habitational purposes, construction purposes or for installing, testing or storing equipment.

There are two major extensions available being **Property in Transit** and **Property at Another Location**. To trigger these extensions a limit must be inserted on the declaration page for each. The Property in Transit is very important if the owner is transporting his own building materials or is responsible for the goods in transit that may be delivered to the site by others. The Property at Another Location may apply if building materials are delivered to

The site before they can be incorporated into the building. This may apply to doors and windows, mechanical equipment, etc. Rather than leave this equipment unattended in the open at the job site the owner or contractor may elect to store this equipment elsewhere. However, this extension will not apply at any site where the goods are being manufactured or being processed. An E & O example is when a broker was sued for the loss of stainless steel kitchen equipment which was to be installed in a restaurant for the owner. The owner prepaid the manufacturer for this equipment (mistake #1 and for approximately \$80,000.)

and when they went to pick up this equipment the manufacturer had disappeared and with the client's money. The client's lawyer immediately sued the broker for not effecting "off-site coverage". This was appropriately defended because even if this extension was included, the coverage would not apply as this location was manufacturing the kitchen equipment. But the case lingered for 2 years!!

A Builders Risk Policy has some unique clauses and having the knowledge of the wording to allow the prudent broker to explain the coverage to the client can help to prevent an E & O.

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