

Construction Law Alert: "Later is Never the Right Time to Check Your Insurance"

John Davidson on Winter 2012

Having the proper insurance coverage is important to all parties involved in the construction process. The various contracts governing the construction project should be clear as to the coverage for which each of the parties is responsible. Additionally, the parties must confirm that the actual coverage in place meets the needs of the project. Here are a few thoughts to help you ensure that the coverage is clear and appropriate.



All parties involved in a construction project should be sure that the contract documents are clear in setting out who is responsible for obtaining specific types of insurance coverage. Typically, the contractor should provide commercial general liability insurance ("CGL") and the designers should provide professional liability insurance. However, things are not as clear when it comes to Builder's Risk insurance. Most traditional contract forms require the owner to obtain Builder's Risk coverage. Increasingly, though, the parties should consider finding out whether the owner or contractor can obtain the insurance most economically. Regardless who is going to obtain the Builder's Risk coverage, the parties need to be clear as to the interest that the Builder's Risk coverage is to insure. For example, the owner may buy the Builder's Risk coverage and only insure its interest. If the contractor believes that Builder's Risk is taken care of and does not confirm that its interests are also insured, there could be a gap in coverage in the event of a claim.

Once you have clarified the responsibilities for the various coverages, the parties should also confirm that the coverage contracted for is in place. Understanding the coverage provided by a policy may require you to look beyond the Certificates of Insurance exchanged at the beginning of the project. A Certificate of Insurance generally only tells part of a story. It will tell you what type of insurance is provided and the limits of that insurance. Typically it will not set out any endorsements that are included in the policy. It may be necessary for a party to request a copy of the insurance policy at issue so that it may see all of the endorsements and exclusions included in the policy.

Additionally, some insurance carriers now offer CGL policies that do not provide completed operations coverage. Arguably, this is among the most important coverage provided by CGL policies for construction projects. Without completed operations coverage, parties are exposed to the risk that only the insured's assets (whatever they may be) will be available to respond to problems that may arise. There may be many business reasons to accept such coverage, but it should be knowingly accepted on the front end and not learned by surprise on the back end.

No one wants to find the gap in coverage at the time the claim is made. Gaps in coverage are best found at the beginning of the project when they can be dealt with most economically. Spending a little time evaluating the insurance on a project on the front end may well pay dividends later on.

If you have any questions, please contact [John Davidson](#) at (803-771-8900).