

WHOSE TIME AND MONEY IS IT?

Time is of the essence in construction contracts for a reason. The inescapable fact is that time is money. The longer the project, the higher the cost, and the greater the risk to work in progress, the tools, equipment, and materials. It is, therefore, absolutely essential that you "get what you pay for" in your insurance coverage. But do you know--for sure--that you *are* getting what *you* paid for?

Builder's risk policies can, and normally do, provide an amount of coverage, for a structure identified in them as "under construction," or such like words, for all risks not excluded. But *what* is the "structure?" And *when* is "under construction?"

WHAT. Typically, the structure includes the obvious, such as the foundations and plumbing. Are you *sure* yours does?

Does it include the temporary buildings? Does it cover the materials? The standard policy covers these, but in language that can be hard to apply. Suppose the next hurricane blows away a supply of paint at the site. It may be difficult to show that the paint was, indeed, there, that it was intended to become a "permanent" part of the structure, and that it belonged to a party insured under the policy. If the words are murky, so is the coverage.

WHEN. It is easy to say coverage begins when construction commences and stops when it is complete. That is the purpose of the policy and the intent of the parties. What if it is not obvious, under the exact terms of *your* policy--the one that matters--whether (choosing a litigated example) surveyor's equipment in use before actual ground-breaking is covered? What if it is not obvious whether work on the "punch list" is covered? (Litigated.) Well, of course, you have a dispute and a possible lawsuit, just like *many* people before you who have trooped off to court. If at all possible, either list all of the things you consider to be part of "construction," or set the period of coverage in terms of a date and time.

VALUE. OK. So, nobody quibbles that the paint--or something even more valuable--was indeed there, intended to be part of the structure, and belonged to an insured during coverage. Do not be shocked if the next question is, "Who says it was worth that much?" [Because, even you admit it baked under the sun for a few days while it was there. Or, whatever.] And don't be surprised if the amount of coverage does not come up to replacement cost, if the policy was not carefully drafted with this in mind, or updated as costs changed. But, that is not the end of it.

EXCLUSION. You are happy with the definitions, the amount(s), and the time period. If you do not understand the exclusions, you could still be paying and not getting. Does the policy cover the costs of delay that came about while replacing the damaged material? Does it cover "consequential damages," or worse, "indirect loss" or "indirect costs," such as being put out of business while the damage was repaired? *No!* Not if it is the standard policy.

You, and if you can pass the cost on, your customers, are paying for all of this one way or another. Either you pay the insurance premium, or out of pocket when coverage does not extend to the loss. But if you think it is the former and the insurance carrier thinks it is the later, that makes for a *costly* disagreement. The Fuller Law Firm may be able to help avoid or solve it.