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- Public Sector Owners
- Private Sector Owners
- Canadian Bar Association (Ex-Officio)
- *Association of Canadian Engineering Companies
- *Canadian Construction Association
- *Construction Specifications Canada
- *Royal Architectural Institute of Canada

*Committee policy and procedures are directed and approved by the four constituent national organizations.

For general information on the Canadian Construction Documents Committee (CCDC), documents published by the CCDC, and the development and proper usage of CCDC standard documents, refer to the CCDC website (ccdc.org).

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1. PURPOSE OF THE GUIDE

This guide provides an overview of the types of insurance commonly used on construction projects. It explains in simple terms the types of policies necessary to comply with the insurance requirements specified in the Canadian Construction Documents Committee (CCDC) standard contract forms. While intended to highlight important issues relating to construction insurance, it does not address project-specific issues. Users are urged to consult their insurance representatives (commonly referred to as agents or brokers), who are experienced in construction matters, to obtain professional advice.

The policies and amounts stipulated in the CCDC standard contract forms are the recommended minimum coverages that should be required by Owners of construction projects. On the recommendation of their insurance representatives, Owners may require broader or different coverage, and should clearly identify this coverage in the supplementary conditions of the contract. Contractors may also insure beyond the policies and minimum limits outlined in the contract documents.

Insurance policies are often confused with surety bonds. This confusion is understandable because bonds are not only written by major insurance companies, they also share the same distribution network and, in the marketplace, a common jargon. For example, fees for both insurance policies and surety bonds are referred to as “premiums” and payouts are referred to as “claims.”

Despite these similarities, insurance policies are distinct from surety bonds. For example, insurance instruments are two-party agreements whereby one party (the Insurer) agrees to indemnify another (the Insured) for a defined loss or set of losses, while surety bonds involve three parties. A performance bond is a guarantee by the Surety (bonding company) for the performance of a contract by the Principal (the Contractor) for the Obligee (the Owner), who is the party for whom the project is being undertaken (see CCDC 22 ‘A Guide to Construction Surety’).

Insurance is based on the risk-spreading principle of underwriting. Premiums are collected from a large population of insureds, and premium levels are determined by actuarial analysis, which takes into account demographic and other factors. It is accepted that losses will be incurred; however, under the principle of risk spreading, the losses of a few are covered by the premiums of many.

Surety bonds, by contrast, are effectively credit instruments, and are underwritten much like a banker assesses a loan application. In this case, no losses are anticipated and if the underwriter believes a Contractor may not be able to perform his or her contractual obligations, no bond will be issued. “Premiums” for bonds do not pay for losses; rather, they are a service fee for extending the required credit. The Surety also has the right to recover any losses from its Principal should it be forced to pay out under a bond. Contractors seeking surety bonds are invariably required to sign an indemnity agreement under which they specifically agree to those terms.
2. SELECTION OF INSURANCE REPRESENTATIVES

Input from qualified insurance representatives or an independent risk consultant is necessary to address Owners’ and Contractors’ construction insurance needs. The following criteria should be considered when selecting an insurance representative:

- Properly licensed in the appropriate jurisdiction;
- In-depth knowledge of the construction industry;
- Expertise in construction insurance, particularly in a construction field similar to your own;
- Responsiveness and service;
- Competitive and innovative insurance placement skills;
- Availability of construction insurance markets (Insurers) to such representative.

Not all brokers and agents are equally qualified, and the level of expertise necessary to address the requirements of a project varies in relation to its complexity. Therefore it may be necessary to search out those who have the skills and resources to procure the required policies.

This Guide makes reference to standard industry wordings, provided by the Insurance Bureau of Canada (IBC) to IBC member firms. To obtain a copy of the wordings, readers are encouraged to contact their insurance representative, or contact the Insurance Bureau of Canada (IBC).

3. GENERAL LIABILITY INSURANCE

3.1 Commercial General Liability Policy (IBC 2100)

A Commercial General Liability Policy insures liability imposed by law or assumed under contract for injury to persons and damage to or destruction of property belonging to others arising from the Contractor’s activities. By including the Owner and the Consultant as Insureds, coverage can be extended to insure the Owner’s project-related activities and the Consultant’s non-professional activities. IBC 2320, Commercial General Liability Policy CCDC Endorsement - is specified for attachment to IBC 2100, and contains the following clauses:

- **Addition of Insureds.** (“Additional Insureds”) The CCDC standard contract form requires the Contractor to purchase General Liability Insurance (CGL) coverage in the name of the Contractor. The policy shall include the Owner and the Consultant as Insureds with respect to liability arising out of the operations of the Contractor with regard to the Work. The endorsement will not cover liability arising out of the sole negligence of either the Owner or the Consultant. Blanket additional insured coverage is available from some insurers.
– The insurer will endeavour to provide 30 days’ Notice of Termination, except 15 days in the event of termination for non-payment of premium, but is not responsible for failure to do so.

IBC 2100 consists of six parts:

1. Declarations – provides details about the insured and insurance (Named Insured, business description, policy period, limits, deductibles, premiums, etc.).
2. Coverages – contains the insuring agreements and exclusions.
3. Who is an Insured – describes who, apart from the party listed on the Declarations, is also considered an Insured.
4. Limits of Insurance – provides the rules that establish the maximum amount(s) payable by the Insurer.
5. Conditions – set out duties of the respective parties in the event of a claim, including provisions for termination of the policy.
6. Definitions – provides definitions of words and phrases having special meaning.

3.2 Insuring Agreement

The insuring agreement outlines the various types of liability to which the policy applies, including:
– Bodily Injury and Property Damage;
– Personal and Advertising Injury including non-bodily injury such as false arrest, libel, and slander;
– Medical Payments;
– Tenants’ Legal Liability.

The insuring agreement commits the Insurer to provide a legal defence against actions covered by the policy and stipulates that it (paraphrased) “may investigate any occurrence and settle any claim that may result.” The policy insures all persons or companies listed as Named Insureds on the Declarations and also any executive officers, directors, employees (but excluding fellow employee suits), or shareholders, acting in the course of their duties. It also insures any non-employee acting as real estate (property) manager on behalf of a Named Insured. The insurance applies only to liability within the coverage territory, usually Canada and the United States. An insurance representative should be consulted regarding coverage for operations outside Canada. The CCDC standard contract forms specify six-year coverage for Completed Operations, starting from the date of Substantial Performance of the Work, and thereby protecting the Insureds against liability for bodily injuries or damage to property (other than the Work) arising from real or alleged defects in the Work.
While the CCDC standard contract forms specify that the Contractor maintain Completed Operations coverage for a period of six years, it is neither possible nor intended that a single policy provide this coverage. Contractors can obtain the required coverage by maintaining uninterrupted coverage under a series of ongoing CGL policies or renewals following completion of the Work. Failure of the Contractor to maintain the Completed Operations coverage during the six-year period after the date of Substantial Performance of the Work would constitute a breach of Contract. Owners should obtain evidence that this insurance is continuously maintained for the period specified in the Contract. However, this will normally only be available on a year-to-year basis as the Contractor renews its coverage.

Contractors should be aware, however, that the Completed Operations hazard exists continuously beyond six years after the Work has been performed. Prudent Contractors should always maintain uninterrupted coverage for this risk under the annual policies applicable to all their operations.

3.3 Exclusions

The exclusions limit or remove coverage and, therefore, should be carefully examined as they apply to the Work. An insurance representative should be consulted to confirm that coverage complies with the specifications detailed in the CCDC standard contract form. It is important to note that Commercial General Liability Policies have the following exclusions:

- For bodily injury or property damage expected or intended from the standpoint of the Insured unless for the purpose of protecting persons or property.

- For liability assumed in contract or agreement. These contracts include lease agreements, railroad agreements, easements, and any other written or oral contracts in which the Insured assumes the tort liability of others. Most Insurers restrict coverage so that it does not apply when injury or damage arises solely from the negligence of the indemnified parties.

- For obligations under Workers’ Compensation, disability benefits or unemployment or employment compensation law or similar law. ‘Workers’ Compensation generally compensates victims for work-related injury or death; there are however some circumstances under which additional coverage should be placed. For example, some employees or officers may not be covered by Workers’ Compensation. In such cases Employers Liability coverage may be purchased in conjunction with the CGL policy.

- For bodily injury or property damage arising out of the ownership, maintenance, use or entrustment to others of automobiles, watercraft, aircraft, unmanned aerial vehicles (UAVs or drones), or all operations necessary or incidental to airports and airstrips. For example, coverage for work at airports is normally not covered under most CGL policies but some Insurers will provide coverage on a case-by-case basis and charge an additional premium.
— For damage to property:

1. Which the Contractor owns, rents, or occupies;
2. Comprising premises that the Contractor sells, gives away, or abandons;
3. On loan to the Contractor;
4. Comprising personal property in the Contractor’s care, custody, or control;
5. To the particular part of real property on which work is being done; or
6. To the particular part of any property that must be restored, repaired or replaced because of faulty work on it.

— For damage to the Contractor’s “product”. In CGL policies, “product” means any goods or products manufactured, sold, handled, distributed, or disposed of by the Insured or others trading under the Insured’s name.

— Exclusion for damage to the Contractor’s completed work unless the damage arises from a Subcontractor’s work. There is no coverage for work that is defective, deficient, inadequate or dangerous.

— For damage to “impaired property”. “Impaired property” is tangible property that cannot be used or is less useful because it incorporates “your product” or “your work” that is known or thought to be defective, deficient, inadequate or dangerous. Forming part of this exclusion is a sub-exclusion for failing to fulfill the terms of a contract or agreement.

— For product recall.

— For pollution liability. Some projects and operations require specific pollution insurance. Contractors should consult their insurance representative regarding their exposure in the interpretation of the term “pollutant” and the need and availability of coverage for pollution liability.

— For losses arising out of a nuclear incident, or war and other hostilities

— For professional services or advice of a professional nature. Contractors should consult their insurance representative before performing any design work or other services that are customarily done by professionals, including architects and engineers. These activities represent a professional exposure that may require Errors and Omissions insurance (also referred to as Professional Liability Insurance) or modifications to the professional services exclusion of most CGL policies. The CGL policy normally does not apply to claims arising from the rendering of, or failure to render professional services for others by the Contractor or on the Contractor’s behalf, or any error or omission, malpractice or mistake in providing those services. See also Article 9.0 (Professional Liability) of this guide.

— Some policies exclude property damage caused by blasting, pile driving, and collapse or caisson work unless such work is done for you by Subcontractors.

— Most policies contain asbestos, mould, cyber, and terrorism exclusions.
These exclusions contain exceptions, are subject to interpretation, can vary from one Insurer to the next, may be amended by endorsement and the policy may contain additional exclusions. Activities not usual to the Contractor’s operations, projects with unique exposures, and any concerns regarding coverage should be reviewed carefully with your insurance representative to avoid a gap in insurance.

3.4 Negotiating Coverage

Although IBC 2100 may be purchased for a specific contract, it is normally maintained annually to insure all the Contractor’s operations. Requirements for specific projects can be covered by attaching IBC 2320 and other appropriate endorsements to the annual policy. When used to provide annual coverage for Work performed under a CCDC standard contract form, it is important that Additional Insureds are covered for liability arising from the Contractor’s operations that relate to the project. An insurance representative should be consulted to determine the suitability of coverage for any particular project.

3.5 Umbrella Liability Insurance

Umbrella Liability policies provide coverage in excess of the CGL (and, usually, the Automobile Insurance policy). Umbrella Liability policies provide a method for Insureds to increase the limits of insurance they purchase and cover their risk of loss due to claims for bodily injury and property damage.

If the Owner or Contractor purchases Umbrella Liability, that policy needs to be reviewed to make sure that the Contractors Endorsement (usually attached to an Umbrella policy) provides coverage as broad as the CGL. If a ‘Standard Excess Automobile Policy (Third Party Liability)’ is attached, it provides coverage in excess of the listed Automobile Policy.

3.6 Adequate Limits

The limit stipulated for General Liability insurance in CCDC 41 is the recommended minimum that should be required by Owners of construction projects. In Canada, judgments for crippling personal injuries have exceeded $15 million while judgments for property damage from a single negligent act have exceeded $10 million. For Contractors working in the United States, the risks are even greater. Limits should be more than $10 million. Subcontractors should not ignore the need for adequate limits depending on the type of work they do or the project involved.

4. BUILDERS’ RISK BROAD FORM PROPERTY INSURANCE

4.1 Builders’ Risk Broad Form Policy (IBC 4042- Also known as Course of Construction Insurance)

All construction work is susceptible to damage from a wide range of causes (known as “perils” in insurance terminology). The most common perils include fire, collapse, windstorm, vehicle impact, theft, vandalism, water damage, and flooding. Construction projects can be protected
against such perils through Builders’ Risk Broad Form property insurance. While the term “all risks” is used to describe a relatively broad form of insurance, such policies are subject to specific exclusions contained in the policy. The insurance industry has adopted the term “broad form” instead of “all risks” as a better way to describe the coverage provided by such policies. Articles 4.3 and 4.4 outline some of the exclusions common to most policies, including IBC 4042, which is specified in the CCDC standard contract form.

The policy insures direct physical loss or damage to the Work in the course of construction and at the risk of the Contractor.

The IBC 4047, Builders’ Risk Broad Form Policy CCDC Endorsement is specified for attachment to IBC 4042 and contains the following:

- Named Insured Clause.
- Additional Insured Clause. All Contractors and/or Subcontractors are added as Additional Insureds. This does not include suppliers who do not perform work at the construction site, consulting engineers or consulting architects.
- Property Excluded Section.
- Cessation of Coverage Section
- Additional Conditions.
- Additional Definitions, e.g. “Resultant Damage” shall mean physical damage to the insured property other than the cost of rectifying the defect or fault that caused the physical damage.
- Subrogation Clause.
- Flood Coverage Extension Clause. (Optional)
- Earthquake Coverage Extension Clause. (Optional)

Exposure to damage commences at the first delivery of materials or pre-bid material, and continues while the work is in progress. The contract between the Owner and the Contractor outlines their responsibilities for loss or damage and should specify in detail the scope of Builders’ Risk Broad Form insurance, and assign responsibility for its purchase.

4.2 Insured Property

Builders’ Risk Broad Form property insurance indemnifies the interested parties for physical loss or damage to all permanent construction and temporary works necessary to facilitate construction, provided their value is included in the amount insured as required by the policy. Insurance is also provided for removal of debris following insured damage. While the insurance provided is termed “Builders’ Risk Broad Form,” the exclusions, as well as the description of the insured property and the amount of insurance, determine the scope of coverage.
4.3 Excluded Property

– Waterborne property. This policy requires amendment where property will be transported by or installed from watercraft. For example, this may be marine construction projects such as bridges or wharves. An insurance representative should be consulted to ensure that appropriate amendments are negotiated or that other insurance is purchased to cover such property.

– Air and ocean cargo, which must be insured under other insurance.

– Contractor’s tools and equipment, which can be insured under a Contractor’s Equipment Floater Policy.

– Money and similar property, vehicles, aircraft, and watercraft, all of which require alternative forms of insurance.

– Property in transit or off-site. This coverage is readily available as a policy extension.

– Projects left unattended for more than 30 consecutive days or when construction activity has ceased for more than 30 consecutive days.

4.4 Excluded Perils

– The cost of remediation for faulty material, workmanship or design. If the project is insured under the Owner’s Builders’ Risk Broad Form property insurance, the IBC 4047 coverage relating to “Resultant Damage” should be added to the policy.

– Rust, corrosion, frost, and freezing.

– Electrical and magnetic injury to electronic recordings.

– Mechanical or electrical breakdown, but not the resultant damage to other insured property. Coverage may be available by specific endorsement for the period of testing and commissioning.

– Flood and earthquake. Coverage for these perils may be added to the policy by endorsement or the exclusions may have been removed.

– Employee dishonesty.

– Inventory shortage.

– Delay, interruption, loss of use or occupancy, and liquidated damages. The policy may be extended by specific endorsement to protect against loss of rental income, profits or “soft costs”. Exposure to these perils should be discussed with your insurance representative.

– Wear and tear.

– Increased costs due to enforcement of by-laws. Coverage may be available by specific endorsement.

– War and other hostilities.

– Pollution.
- Nuclear energy hazards.
- Mould, terrorism, asbestos, and cyber are also usually excluded.

These exclusions contain exceptions, are subject to interpretation, can vary from one insurer to the next, may be amended by endorsement and the policy may contain additional exclusions. Activities not usual to the Contractor’s operations, projects with unique exposures, and any concerns regarding coverage should be reviewed carefully with your insurance representative to avoid a gap in insurance.

4.5 Insurance Limits

In the event of loss or damage, the policy will pay, subject to the limits stated therein, for the least costly of repair, restoration or replacement of damaged property, the cost of debris removal, and expenditures detailed in the policy.

The insurance limits should be sufficient to cover total replacement costs, plus costs for debris removal. This limit should be monitored throughout the policy term to include the costs of changes in the Work. During periods of high inflation or where additions or changes in the Work increase the cost thereof, the value of the insured risk could easily rise and exceed the amount of insurance. Consequently, the amount of the policy may not sufficiently cover replacement of the Work. Therefore, the CCDC 2 Builders’ Risk Broad Form property policy limit is required to be not less than the sum of 1.1 times Contract Price and the full value of Products and design services that are specified to be provided by the Owner for incorporation into the Work. Fees charged by architects and engineers for professional services related to rebuilding after a loss need to be reviewed to see whether the insurer treats them as a “hard cost” or a “soft cost.” This can only be confirmed by reading the insurer’s “soft cost” endorsement.

4.6 Builders’ Risk Broad Form Property Policy Coverage Extensions

The standard Builders’ Risk Broad Form property policy, as required by CCDC 2, insures only physical damage to the project. There are additional financial risks that can and should be addressed, including:

- **Soft Costs** or expenses incurred due to property damage. These could include costs for loan extension during reconstruction, additional interest, leasing and marketing, legal and accounting expenses, and other miscellaneous carrying charges such as property taxes, building permits, and insurance premiums.

- **Business Interruption.** Many projects are intended to provide revenue for the Owner, and delays because of physical damage or loss could reduce this revenue. Most Builders’ Risk Broad Form Insurers can extend the policy to insure this risk. This exposure is equally important for renovation projects that involve alterations to existing buildings, structures or other property in the Contractor’s care, custody, or control.

- **Extra Expense Insurance or Expediting Expense Insurance** indemnifies the Insured for overtime, increased shipping expenses, and other costs to expedite repair or replacement of damaged property following a physical damage loss. This insurance
can assist the Contractor to fund and complete the project expeditiously, thereby avoiding liquidated damages, and assist the Owner to meet occupancy deadlines.

- **Permission for Occupancy.** Most Builders’ Risk Broad Form policies allow for early occupancy during the project term for office, residential, parking and retail purposes. There are other situations (such as a warehouse or manufacturing plant), where early occupancy may take place, and as such the policy will need to be amended to allow for such early occupancy.

- **Testing and Commissioning.** This covers mechanical or electrical breakdown of equipment while it is undergoing testing or commissioning. Wordings vary, but typically coverage is provided for 21 to 30 days (cumulative, not consecutive) per object. Often used equipment is excluded unless it is refurbished with the manufacturer’s warranty still in force. This coverage is sometimes available as an endorsement to an Equipment Breakdown policy.

- **Cyber, valuable papers, and electronic data** (See Section 4.10).

An insurance representative should be consulted to discuss how these and other alternative coverage options may apply to the particular project.

### 4.7 Additional Risks in Renovation and Addition Projects

Projects involving renovations or additions to existing buildings, tenant fit-ups, heritage restorations, and construction or installations within existing structures present additional exposures. In many cases, the risks and financial exposure can be considerably out of proportion to the contract value. The following are examples of additional risks; an insurance representative should be consulted to ensure that these are addressed with appropriate insurance coverage.

- The means by which damage to existing property will be insured.
- Potential conflicts with Work being performed concurrently at the site by other contractors, which may result in damage to the project.
- Risk of damage to other contractors’ equipment and work in the same circumstances.
- Loss of use (business interruption), which may be significant if existing property or plant equipment is damaged.
- In the case of heritage property, special expenses and fines or penalties that may be payable in the event of damage to the property.
- Special exposures arising from the presence of, or work involved in removing, certain materials, e.g., asbestos, PCBs, or other contaminants or pollutants.

Where projects involve substantial renovations it is advisable to insure the existing building under a Builder’s Risk Broad Form property policy or ensure the Owner’s insurer provides a waiver of subrogation against all Contractors/Subcontractors under the existing property policy on the building. This will prevent subrogation against the negligent Contractor by the separate building insurer, and avoid potential coverage disputes under a Contractor’s CGL.
policy. Coverage disputes have arisen in the past about whether or not a building is in a Contractors “care, custody, or control” or what is the “particular part” of the property that is being worked upon (and therefore excluded).

The Owner should declare the full replacement cost of the existing property in the bid documents and stipulate how insurance comparable to IBC 4042 is to be purchased to insure the value of the existing structures, as well as the cost of the Work and other items for which insurance has been described herein. The bid documents should also stipulate which party to the Contract will be responsible for purchasing and paying the premium for this coverage.

4.8 Negotiating Insurance Coverage

IBC 4042 is intended to insure specific projects. The premium is calculated when the Insurer, after reviewing information necessary to underwrite the risk, establishes a rate per $100 of the Contract Price. This rate is then applied to the amount of insurance (see Articles 4.5 and 4.6). The rate may be for the term of the project or an annual rate, but in either case, the duration of the project has a significant bearing on the cost. Broadening coverage by insuring the perils of flood or earthquake exclusions increases the rate if the Insurer’s risk is increased. To establish rates, particularly for larger projects, Insurers require a complete description of the Work, geotechnical reports, and details of fire and security protection. In the case of renovation work, Insurers may also require detailed descriptions and evaluations of existing property. It is the Owner’s responsibility to provide this information.

Where required, coverage extensions or enhancements to the standard form should be discussed and negotiated with your insurance representative. For example, while the “Builders’ Risk Broad Form” property policy may continue to insure the project during the testing and commissioning period, coverage is specifically excluded for electrical and mechanical breakdown or derangement of machinery such as boilers and air conditioning systems. However, it is possible to purchase an amendment to the exclusion, which provides insurance for such damage for a specified period, subject to certain limitations and payment of an additional premium.

Another factor to consider is the amount of deductibles. Normally, Insurers apply deductibles to avoid the administrative cost of handling minor losses, and to encourage the Insured’s interest in loss prevention. Small losses and mishaps are usually provided for in the Contract Price. Deductibles for most perils can easily range from $2,500 to $10,000 or more; however, it should be noted that the maximum deductible of $5,000 specified in CCDC 41 may not be available on larger projects. Deductibles for major perils such as flood and earthquake can be significantly higher. Contractors and Owners should be aware that deductibles apply per occurrence; the potential premium savings that may be realized with higher deductibles, must be weighed against the cost of multiple claims.

4.9 “Material Change” in Risk

A “material change” is one the Insured has knowledge of and would, if brought to the attention of the Insurer, affect the Insurer’s acceptance of a risk or the terms and conditions of coverage. Failure to notify the Insurer of such change may void coverage in the event of a claim. It is imperative that the Insured advise the insurance representative in writing of
changes to the project that may affect the potential for, or contribute to, loss under the policy. The following are examples of material changes that should be brought to the insurance representative’s attention:

- Projects becoming vacant, unoccupied or shut down for more than 30 consecutive days.
- Significant change in construction methods, materials, or scope of work.
- Change in public or private fire protection or security.
- Partial or total occupancy of the project prior to completion for purposes other than habitational, office, retail, or parking.
- Discovery of hazards presenting significant loss exposure which were not present when insurance was purchased, or which the Insurer was not advised of when applying for insurance.

4.10 Valuable Papers, Electronic Data and Cyber Threats

Further to section 4.3 Excluded Property, following are a few frequently overlooked coverages which the standard Builders’ Risk Broad Form property policy, as required by CCDC 2, does not address.

4.10.1 Valuable Papers

Consider blueprints and shop drawings destroyed in the site trailer over a long weekend (i.e. from a break-in theft, vandalism, arson or other fire, etc.). These can be included by endorsement or may be covered under an Office Package property policy.

The cost to reproduce blueprints and shop drawings, whether lost through theft, vandalism, arson or other means, although not significant, could still be substantial. Insurance that is available to indemnify for the reproduction costs of this type of property is generically known as “Valuable Papers and Records.” This type of insurance coverage is not supported by any IBC form and thus coverage details vary from insurer to insurer (particularly the valuation clause). There is a strong possibility this coverage is included in an office insurance policy, however that coverage may not extend from an office location to the project site. Further, it may only apply to the Insured, and not provide coverage for other parties’ shop drawings at the jobsite.

To ensure coverage is available at the project site and for all contractors and consultants, a solution is to incorporate “Valuable Papers and Records” onto the Builders’ Risk Broad Form policy. It would also be beneficial to negotiate a low deductible for this coverage so that a high Builders’ Risk Broad Form deductible does negate this coverage.

It is also important to note that “Valuable Papers and Records” coverage sometimes excludes electronic information, as well as damage to computers.

4.10.2 Electronic Data

If “Valuable Papers and Records” coverage excludes electronic information (generically referred to as “data”) and computer breakdown (generically referred to as “data problem”),
then it would not insure the Building Information Management (BIM) nor electronic records used to create blueprints should the “data” become corrupted or irretrievable. It should be noted that as machines, it is inevitable that computers will eventually break down. It should also be noted that many parties provide input into the BIM.

Furthermore, the “data” is typically created and manipulated away from the jobsite (such as at various offices or even while on vacation), so the corruption to the “data” or “data problem” could occur anywhere.

It is best practice to keep frequent back-ups of critical “data” however this practice is not always adhered to and the back-up may not be kept secure offsite. The cost to reproduce the “data” could be significant; there is the potential to lose all work done by all parties since the last successful and retrievable back-up.

To ensure coverage is available at the project site and for all Contractors and Consultants, a solution is to extend the coverage for “Valuable Papers and Records” to cover “data” and “data problem” both at the jobsite and away from the jobsite.

4.10.3 Cyber

An additional issue related to coverage for “data” and “data problem” is that it typically excludes damage caused by viruses as well as the liability that may be incurred for spreading viruses to computer networks of others. The following provides more detail about “cyber” exposures.

As mentioned above, “Valuable Papers and Records” coverage typically excludes corruption or theft of “data” from hacking or a virus. Hackers operate from anywhere around the world with the motivation of personal profit, political ideology or just malice.

It is relatively easy to visualize how “data” could be corrupted from a virus and the problems that would result. Less easy to visualize is how operations would be affected by an incapacitated computer network and the potential loss of income that could result while the network and “data” is being restored, especially if a firm is reliant on the computer network. These costs (to restore corrupted or lost “data” and the resulting loss of income) are commonly referred to as “first-party cyber coverages.”

While an individual firm’s computer network is often protected with a robust firewall, passwords, antivirus software and similar tools, it is important to consider how often “data” changes hands, particularly how “data” (including the BIM) is transferred back and forth through email, the Cloud, and portable memory, with changes being made regularly to the “data.” In these cases, there is no way of knowing what security protocols may be in place. Compounding this issue is how “data” is often taken home or away from the office or jobsite to conduct work outside regular working hours on personal computers. Each of these instances are indicative of how, even with robust security protocols, a virus can take to find its way into a computer network.

Important to consider is that one firm may inadvertently spread a virus to the computer networks of other parties they do business with, and that firms could be found legally liable for spreading a virus, even if it was not done intentionally.
In many cases, a Commercial General Liability insurance policy probably specifically excludes liability for theft of, loss of, or corruption to somebody else’s “data” (including their personal information such as social insurance numbers or credit card numbers). The legal liability (including defense costs) in these situations is commonly referred to as “third-party cyber coverages”.

Even with hold-harmless agreements in place in contracts, which may not always address “cyber liability,” a virus could be spread to parties who are not part of those hold-harmless contracts, allowing them to sue all parties they feel were responsible.

In order to provide protection in these situations, firms should consider a Cyber Insurance Policy for both first- and third-party coverages.

5. **BOILER AND MACHINERY / EQUIPMENT BREAKDOWN INSURANCE**

5.1 Introduction

Boiler and Machinery Insurance (now more commonly referred to as “Equipment Breakdown Insurance”) covers mechanical or electrical breakdown of certain “objects” (i.e. a piece of equipment) by an “accident” (an unintentional, fortuitous act).

Boiler and Machinery Insurance coverage is required under the insurance provisions of CCDC contract forms. The insurance industry offers coverage in a variety of ways:

1. A policy covering while the object is in use (e.g. a boiler used to provide heat to the project).

2. An endorsement to a Builders’ Risk Broad Form property policy and then a separate policy to cover mechanical/electrical breakdown (usually after testing is complete).

3. A separate policy or an endorsement to either the Boiler and Machinery policy or the Builders’ Risk Broad Form property policy to provide coverage during testing.

5.2 Objects

The comprehensive form covers all pressure vessels and mechanical and electrical equipment including heating and power systems and may be extended to include process equipment and/or production machinery. The form is subject to various exclusions which vary by Insurer.

5.3 Accidents

The term “accident” in Boiler and Machinery insurance policies is defined as:

“A sudden and accidental breakdown of the object, or a part thereof, which manifests itself at the time of its occurrence by physical damage to the object that necessitates repair or replacement of the object or part thereof.”
Damage may be caused by explosion, cracking, bursting, electrical arcing, and mechanical breakdown. Some Insurers may use a definition other than the one presented above; therefore it is important to discuss the suitability of coverage with your insurance representative.

Certain losses are not covered, including loss caused:
- While objects are undergoing hydrostatic, pneumatic, or gas pressure testing, unless testing coverage has been endorsed onto the policy.
- By war, nuclear energy hazards, flood, earthquake or by-law enforcement.
- By fire, subsidence, and other risks covered by IBC 4042.

Some of these coverages may be specifically purchased.

Unless testing coverage has been purchased, coverage does not start until the objects are connected and ready for use, tested and contractually accepted by the Owner. The Contractor may be considered as the owner of the equipment until acceptance by the Owner takes place.

5.4 Insurance Limits

On a construction project, the limit per accident should not be less than the replacement value of the permanent or temporary boilers and pressure vessels, and other insurable objects forming part of the Work. If the insurance coverage is less than the insurance provided by IBC 4042 and IBC 4047, higher limits should be specified. It is also important to consider the potential for, and possible impact of, a delay, and to determine whether business interruption policy should be purchased. Costs to remove and replace the object should also be factored in.

5.5 Important Considerations

It is not uncommon for an accident to occur where the cause cannot be readily determined. Where two different Insurers are involved, one insuring the Builders’ Risk Broad Form property policy and the other the Boiler and Machinery policy, both could deny coverage. To avoid disputes, place both policies with the same Insurer, or ensure that all Insurers involved are signatories to an industry-wide “joint loss agreement” that determines how a disputed loss is handled.

While it is preferable to include Boiler and Machinery/Equipment Breakdown Insurance under one policy, if a separate policy is placed then it is important to make sure that appropriate Extensions of Coverage are included. Examples of extensions include Soft Costs, Business Interruption, Extra Expense and Permission for Occupancy. At minimum, the same extensions covered under the Builders’ Risk Broad Form policy should be included. An insurance representative should be consulted.

All boiler policies contain a Suspension Clause, which effectively allows the Insurer to cancel cover for an unsafe object immediately. Generally, the clause is applied only if a condition is
discovered that would endanger life and limb. Modification or removal of a Suspension
Clause is not negotiable because Insurers consider it a matter of public safety rather than an
insurance requirement.

6. AUTOMOBILE LIABILITY INSURANCE

6.1 Insurance Limits

Contractors must provide and maintain Automobile Liability Insurance for all owned or leased
vehicles. The $5 million limit stipulated for Automobile Liability insurance in the CCDC
standard contract forms is the recommended minimum that should be required by Owners of
construction projects. In Canada, judgments for crippling personal injuries have exceeded
$15 million while judgments for property damage from a single negligent act have exceeded
$25 million. For Contractors working in the United States, the risks are even greater. Limits
should be more than $10 million.

6.2 Standard Owner’s Form Automobile Liability Policy

A Standard Owner’s Form Automobile Liability Policy provides Third Party Liability and
Accident Benefits Insurance covering licensed vehicles owned or operated by or on behalf of
the Contractor or leased to the Contractor. Insurance for owned vehicles shows the
Contractor as the Named Insured, while insurance for leased vehicles shows the Lessor as the
Named Insured. The policy for leased vehicles should also include a “Permission to Rent or
Lease” Endorsement (appropriate to the province or territory) showing the Contractor as
Lessee and Operator.

6.3 Standard Non-Owned Automobile Liability Policy

Often attached to a CGL policy, a Standard Non-Owned Automobile Liability Policy is a
separate policy that provides Third Party Liability. It usually includes an endorsement which
excludes vehicles leased for periods longer than 30 days. Two common endorsements that
can be purchased are the Standard Endorsement Form 94 (SEF 94), which provides physical
damage to leased vehicles or the SEF 96 or similar, which provides contractual liability. The
policy protects the Contractor against claims arising from accidents involving vehicles not
owned by the Contractor, or leased for periods of less than 30 days by the Contractor, but for
which the Contractor may be legally liable. For example a Contractor’s employee may be
required to use his or her own automobile on behalf of the Contractor. If the employee is
involved in an automobile accident during that time and does not have insurance, or if the
insurance is inadequate, the third-party claimant has the right to name the Contractor in the
suit. The Standard Non-Owned Automobile Policy responds to this type of claim.
7. AIRCRAFT AND WATERCRAFT LIABILITY INSURANCE

Contractors using aircraft and watercraft require special liability policies with minimum limits of $5 million or more depending on the exposure.

Where a Contractor uses owned or leased aircraft an Aircraft Insurance Policy is required because the CGL excludes this type of loss. The Owner reserves the right to review the policy to determine whether it is adequate. The policy must include Passenger Bodily Injury Liability in the event of claims by passengers or their estates for bodily injury, sickness or disease, including death, arising from the ownership, maintenance, or use of the insured aircraft.

Non-owned aircraft liability insurance must be purchased if a Contractor is hiring or chartering an aircraft belonging to someone else and the work involves use and operation of an aircraft. The owner of the aircraft may not be insured for aircraft liability or may not have adequate limits in the event of a loss.

Watercraft Liability Insurance, provided by a Protection and Indemnity Policy, is required for all watercraft owned, leased or operated by or on behalf of the Contractor, or in any way related to the performance of the project. The Owner is to be named as an Additional Insured on the policy, and reserves the right to review the policy to determine whether it is adequate. While some insurers provide coverage for small vessels under the Commercial General Liability Policy, Protection and Indemnity Insurance, in addition to providing Third Party Bodily Injury and Property Damage coverage, protects the Contractor against claims where there is neither bodily injury nor property damage to third parties. For example, a barge used in the Contract may sink in the navigation channel of a river, but not cause third-party bodily injury or property damage. However, the authority responsible for maintaining the channel has the legal right to insist that the Contractor pay for removal of the barge.
8. CONTRACTORS’ EQUIPMENT INSURANCE

Contractors’ Equipment insurance covers direct physical loss of construction machinery and equipment, and assures that the Contractor will not be forced out of business or forced to delay or abandon the contract because of a major uninsured or underinsured equipment loss.

Although it can be argued that the decision to purchase insurance rests with the Contractor, it is in the Owner’s interest that the Contractor remains in business and on the project. Therefore, it is reasonable for the Owner to insist on equipment insurance. Policies and deductibles vary with each insurance company, and the Owner has the right to determine the acceptability of any policy. Where the Contractor provides satisfactory proof of financial capability to the Owner, the Contractor is entitled (as provided by CCDC 41) to self-insure the risk to the Contractor’s construction machinery and equipment, or any portion thereof.

Coverage is usually provided on a broad form basis on construction machinery and equipment owned or leased by the Contractor and used by the Contractor in performing the Work. Some policies cover scheduled items only, some are blanket, covering all owned equipment. Extensions are available to equipment such as cranes, which are rented temporarily. The policies are required by CCDC 41 to contain a waiver of subrogation against the Owner.

Broad form Contractors’ Equipment Insurance policies vary considerably. Some offer broad coverage while others, due to their exclusions, restrict coverage. In most cases, claims settlement is based on the actual cash value (replacement cost less depreciation); in others, settlement for newer items can be based on replacement cost (no depreciation) if replacement cost coverage is purchased.

Rental reimbursement coverage is available to cover the cost of renting equipment to temporarily replace what has been lost or damaged. On policies where items are scheduled, a sub-limit should also be purchased to cover unscheduled equipment that is owned, borrowed or leased.

In determining the form and terms of the insurance, Contractors should assess their capital position to determine what portion of the overall risk they can assume.

9. PROFESSIONAL LIABILITY INSURANCE

Most CCDC standard documents for contracts between Owners and Contractors do not address the issue of professional liability. Most general liability insurance policies exclude coverage for liability arising from professional services. With the exception of design-build contracts, responsibility for project design and other professional services is generally covered by separate agreements between Owners and their Consultants, project managers, and construction managers.

It is recommended that Owners and Contractors seek advice from their insurance representatives as to what type of “professional liability” or “errors and omissions” insurance is present or available to insure claims arising from the provision of professional services.
The following are examples of insurance currently available:

- Professional liability insurance for architectural, engineering, and other consultants.
- Professional liability insurance for Contractors who employ consultants, architects or engineers (insurance is available to insure the firm’s corporate liability or the personal liability of the individual employees).
- Insurance for vicarious liability arising from design services that the Contractor has contracted to provide to the Owner, but for which the Contractor enters into separate agreements with consultants, e.g. preparation of shop drawings or field review by consultants.
- Single project insurance for Consultants or Design-Builders involved in a specific project.
- Errors and omissions insurance for project managers, construction managers, or other consultants who may not be responsible for project design, but who may provide other professional services.

Many professional licensing authorities do not require Consultants to maintain professional liability insurance, or may require only modest limits of liability insurance. As well, the following peculiarities of errors and omissions insurance should be considered:

- Insurance is usually on a “claims-made” basis, that is, coverage is available provided the policy is in place when the claim is made, i.e. not when the alleged error or omission occurred.
- Policy limits are “per claim” and “aggregate,” that is, there is a cap on each claim as well as the total amount of insurance available annually or during the policy period, regardless of the number of claims advanced under the policy.
- Policies usually only insure specific “Named Insured” professionals. Unless specifically endorsed, such policies will not insure or defend other project participants. Extension of coverage to non-professionals is seldom available from Insurers.
10. WRAP UP LIABILITY

General liability insurance placed on a construction project insuring all interested parties is known as “Wrap Up Liability Insurance” because it combines all interests on a single policy. Either the Owner or general contractor may purchase Wrap Up Liability Insurance covering the Owner, general contractor, subcontractors and Consultants (excluding coverage for professional errors or omissions). In most cases, suppliers who perform no actual work at the project site are not included.

The advantages of a Wrap Up Liability Insurance include:

– Reduction in the time and effort necessary to obtain and review separate CGL policy documents.
– Uniformity of coverage, limit, and deductible.
– Dealing with one single Insurer for claims and loss prevention services.
– Elimination of inter-Insurer (and thus some project party) disputes.
– The policy is in force for the entire project term without the need to go through a renewal process.
– Availability of higher limits than normally available to small Contractors and Subcontractors without the consequent cost of minimum premiums usually applied to the purchase of higher limits.
– Elimination of duplicate coverages and premiums, and access to premium and volume discounts. These factors in many cases make a Wrap Up Liability Policy cost-effective as compared to the total of separate CGL premiums which would otherwise be paid by all parties on a project.
– Maintenance of a dedicated limit for the project, and for the completed operations hazards, for a specific period (generally two years after completion).
– Ease of the Owner to identify the insurance cost of the project.

The disadvantages of a Wrap Up Liability Insurance include:

– Almost all exclude damage to the project except during the completed operations period. As such it is imperative that a Builders’ Risk Broad Form policy be in place for the project.
– There is no standard industry form. Therefore, other than the exclusion for damage to the project, coverage should be equal to or greater than the IBC 2100.
– The Wrap Up Liability Insurance deductible may be higher than the Contractor’s CGL deductible.
– The Wrap Up Liability Insurance may have expired. For example, if it is kept in force only until Substantial Performance of the Work, some Contractors may still be working at the project site.
– Coverage may not be as broad as a particular Contractor’s CGL.
– There is only one limit available for all project parties with respect to an occurrence.
Normally Contractors should continue their current CGL program to cover gaps in coverage between their own program and the Wrap Up Liability Insurance by having a “Wrap Up Difference In Condition” (DIC) Endorsement, as well as for coverage once the completed operations coverage of the wrap up is over. Wrap Up DIC endorsements vary substantially as there is no standard industry form. Some can be broadened to include “Difference in Deductibles” and “Difference in Limits” between a Contractor’s CGL and the limits/deductibles of the Wrap Up. A CGL policy with a Wrap Up exclusion should not be accepted.

11. INSTALLATION INSURANCE

Installation insurance is often referred to on most contractors’ property insurance policies as an Installation Floater. Coverage forms differ to some degree from Insurer to Insurer but the intent is to cover a contractor for its installation work. The form differs from Builders’ Risk Broad Form which generally insures multiple parties as Insured.

The Installation Floater usually insures “any and all materials (including labour) and supplies of any nature whatsoever, except as excluded or limited, installed or waiting for installation for which the Insured has an insurable interest in connection with the repair, completion, erection, or improvement of property.” The contract value, not just the materials should be insured.

The form is usually written on a broad form perils basis so that in the event a peril that is not otherwise excluded by the policy causes direct physical loss or damage to materials and supplies, the Insurer repairs or replaces the materials. To clarify, perils include those caused by the Contractor such as a fire, as well as natural perils such as a windstorm or even perils caused by others such as vandalism. An insurance professional should be asked to review the wording in more specific detail.

Loss/claim example: A windstorm lifts partially installed work from a roof deck and blows away materials awaiting installation. The Insurer will in most cases indemnify for the lost materials, and the labour and material involved in reinstalling the work, above the deductible.

Many contractors’ policies have inadequate Installation limits. Installation Floaters vary in language and coverage scope from one Insurer to another. There are two key concerns related to inadequate Installation limits:

1. **Verification of Values:**

   “The Insurer has the right to inspect the properties covered and examine books and records to ascertain you have purchased the appropriate levels of insurance.”

   Insurers do from time to time exercise this right.

2. **Coinsurance (sometimes identified only as a “Special Condition”):**

   Coinsurance clause typically states that:

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“...if the total value of property insured exceeds the amount of insurance purchased, you are entitled to recover only such proportion of the amount of insurance as it bears to the total value of property at risk”.

For example, a roofing contractor has sustained $226,000 storm damage to its work. Assume the Installation Floater has a limit of $500,000 and the actual project value is $1,000,000. The amount of insurance in place ($500,000) is only 50% of the value of the work ($1,000,000) so the Contractor only gets back 50% of his loss i.e. $113,000 less its deductible.

Insuring to the maximum value of projects undertaken (that are not covered by a broad form policy) is recommended, and failure to do so can be far more costly.

Some Insurers will delete the coinsurance requirement. This is beneficial to the Contractor but it does not remove the need to adequately insure to the maximum project exposure in case there is a total loss.

For Contractors doing a mixture of small to large projects, it is recommended that the policy be on an adjustable basis (using a rate based on annual revenue), rather than paying a rate per $100 of coverage based on the Installation Floater limit. If the occasional large job comes along with an exposure higher than the Installation Floater limit, the limit can be increased specifically for that job. If the limit needed is more than what the Insurer is willing to provide on an Installation Floater, then a Builders’ Risk Broad Form property policy can be purchased.

12. SUBCONTRACTORS

To avoid any coverage disputes, the Builders’ Risk Broad Form Policy (IBC 4042) is extended by IBC 4047 to insure all Subcontractors.

There are instances where Subcontractors are specifically excluded by the Owner or the Contractor who purchased the Builders’ Risk Broad Form policy. It is in the interest of Subcontractors to confirm that appropriate coverage is provided for them under the Builders’ Risk Broad Form policy.

13. SUBROGATION

When an insurance company pays a loss covered by one of its policies, it is allowed to sue the party that caused the loss for the amount it has paid plus its expenses. This is known as the “right of subrogation”. However, there are some important points to remember about subrogation:

1. An insurance company cannot sue its Insured or any other Insured under the policy for the amounts it has paid (certain uncommon automobile losses excepted).

2. An Insured, before the loss occurs, can release someone from responsibility for damages, meaning the insurance company is estopped from subrogating against that person. This is
known as a release and it is binding on the Insurer unless there is language in the policy to the contrary.

3. Many leases and other contracts require a “waiver of subrogation”. Only the Insurer can issue the Waiver of Subrogation endorsement, although per item 2. above the Insured can agree before loss to the release.

Some policies such as a Builders’ Risk Broad Form policy, contain a waiver of subrogation against Insureds but allow for subrogation against architects, engineers, or other professionals for loss or damage caused by professional errors or omissions.

14. CLAIMS

14.1 Responsibility for Reporting Claims

To expedite reporting of claims, or occurrences that are potential claims, one person should be designated as the insurance contact. It is important to report to the Insurer immediately following an incident or a notice of claim. Failure to report an incident promptly may prejudice the Insured’s right under this policy.

Before starting construction, particularly on large projects, it is wise to establish claims handling procedures with Insurers, who will then appoint adjusters to receive and respond to all notices.

A verbal notice of a claim should be followed immediately by a written notice, given details of the following:

- Date, time, and location of occurrence;
- Cause;
- Description of circumstances leading to the incident;
- Estimate of loss or damage;
- Names and telephone numbers of contacts; and
- Names and addresses of witnesses.

It is important to document the incident thoroughly (including media), not dispose of any damaged property, especially where safety or continued construction requires immediate repair or removal.

Send copies of all notices to your insurance representative as it may be necessary to consult with the representative about coverage or settlement.
14.2 Handling Claims

Following an incident, the Insured should take immediate action to prevent further loss or damage. Where an accident involves personal injury or damage to property of others, the Insured should not acknowledge liability, offer a settlement, or take any action that implies legal responsibility. It is the insurance company’s responsibility to investigate the accident and represent the Insured.

In the case of loss or damage to the Work, equipment or similar owned property, the Insured must protect such work, equipment or property from further loss or damage. However, the Insured should not undertake repairs, removal, or replacement (unless to mitigate further damage) until the insurance company has been notified and the adjuster has begun to investigate the loss. Some policies provide special permission in this respect; however, this should be discussed with your insurance representative.

14.3 Proof of Loss

The Property Insurer is required to pay only after receipt of Proof of Loss – a written statement of claim in the form of an affidavit, which provides all relevant facts and data. Documents required to support Proof of Loss include labour and material records, contracts, and invoices.

Where proof cannot be filed within one year, an extension should be obtained from the insurance company. In IBC 4042, as amended by IBC 4047, losses are payable within thirty (30) days after completion of the Proof of Loss.

Since the construction industry is generally funded by monthly progress payments, it would be desirable for insurance companies to follow the same practice when settling large claims. Some Insurers will agree to accept interim Proofs of Loss once the extent and cause of the damage has been clearly determined, and make interim payments accordingly. Negotiations to have interim proofs accepted can only begin after the loss occurs. Therefore, in the event of serious loss or damage, it is important to obtain firm repair or replacement quotations to assist in the negotiation of interim payments.

In all cases of loss or damage, the Insured is responsible for protecting the property against further damage. This should be discussed with an insurance representative.

It is important to consult insurance representatives to ensure appropriate coverage is in place for the mutual protection of all parties.