



Contractors all risks - an introduction

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Introduction / housekeeping

Welcome and thank you!

60 minutes webinar format – muted and video off. Polls, Chat, Q&A

Diane Jenkins

- Background in Insurance Broking Sector – technical programme design, M&A due diligence, BI reviews, cyber insurance
- Former chair and education secretary of London Business Interruption Association



Nick Thomas & Associates

- Up to the minute training solutions addressing the challenges of the modern insurance professional
- Technical insurance; sales, communication and soft skills; customer service; management and leadership; performance, resilience and wellbeing training

Objectives

At the end of the session delegates will:

- be aware of what a contract works policy covers
- know how the design defect exclusions apply and what cover is available
- understand what liability cover a contractor requires

Contractors all risks

Policy that covers risks associated with a construction project

Contractor and employer are composite insureds (joint names)

- Can be project specific or an annual policy
- Small business may be termed 'tradesmen insurance'

Typically cover includes

- Contract works - loss or damage to building works and materials
- Public liability/employers' liability
- Erection all risks /machinery movement
- Plant owned and hired in
- Business interruption



Contracts in construction projects

Contract conditions key

- Allocate risk
- Allocate costs/price
- Insurance requirements

Within contracts – there are various options

- Brokers need to know which options chosen (e.g., JCT Clause 6.7 options A, B, C)
- Watch for bespoke amendments
- Ask for copy of final contract and check insurance and indemnity clauses
- Check for collateral warranties – extend liability



Contractors all risks - contract works

Covers physical damage to the works

Cover applies during the construction period to practical completion

May also have a defects liability period to cover

- Claims resulting from dealing with outstanding remaining works and snagging matters
- Claims resulting from work undertaken during the period prior to Practical Completion, but where the damage occurs during the defects liability period

Claims occurring basis

May cover defects but only where there is physical damage to the works

- Still need to buy design and build professional indemnity cover as well



Contractors all risks - contract works – defects exclusions

DE1: Outright Defect Exclusion - excludes any and all damages due to property defects

DE2: Extended Defective Condition Exclusion - excludes damages to (a) property that defective or (b) property that relies on (a) for support, but consequential damage is covered

DE3: Limited Defective Condition Exclusion - excludes damage to property that is defective in whole or in part but covers consequential damage

DE4: Defective Part Exclusion - restricts the exclusion to any 'component part or individual item' which is defective, (the “faulty part”), covers consequential damage

DE5: Design Improvement - covers all damage excluding only the additional costs of improvements to the original design, materials, etc.



Contractors all risks - contract works

A steel frame building with roof completed, cladding partially completed and dwarf brick wall completed. The nuts and bolts used in construction of the steel framework proved to be inadequate, and the whole structure collapsed, damaging everything. The various defect exclusions would limit indemnity as follows -

- DE1 - all damage would be excluded
- DE2 - all damaged items excluded except for the dwarf brick wall
- DE3 - steel framework excluded; roof, cladding and dwarf brick wall paid for
- DE4 - only the nuts and bolts excluded
- DE5 - all damage paid for, but improvement costs of nuts and bolts excluded



Contractors all risks - contract works – key extensions

‘Free issue materials’ for which the insured is contractually responsible

Contract works and plant stored away from contract site

Contract escalation cover

Completed properties awaiting sale

Expediting expenses

Debris removal/professional fees.

Cost of clerical labour and materials for redrawing plans

Own /hired In plant/own and employees’ tools

Temporary buildings



Contractors all risks - public liability

Legal liability for third party injury /property damage

Common policy conditions

- Hot work precautions
- Working at height/tunnelling
- Checking PL insurance of BFSC

Common policy exclusions

- Pandemic (Communicable Disease exclusion LMA 5396)
- Hazardous locations (differ between insurers)
- Asbestos and other toxic substances (e.g lead, silica)
- Contractual liability (NB collateral warranties)
- Rectification of a defect
- Design/advice for a fee (design and build professional indemnity cover needed)
- Pollution unless cause sudden/accidental



Contractors all risks - public liability

Indemnity to principal

- Standard requirement in contract between principal and contractors, contractors and sub-contractors
- Often insurers give cover only where it is a contractual requirement to cover principal
- NB some contracts not satisfied if cover provided only where insured requests cover applies
- May be within 'additional persons covered' clause

Principals should not rely on this – limits may not be sufficient



Contractors all risks - JCT clause

6.5.1. non-negligence liability

Non-negligence, JCT 6.5.1, party wall insurance

Public liability responds to negligence

- But employer and contractor may also be liable for damage to third party property without negligence
- Need additional cover
- JCT contract condition 6.5.1 sets out cover required (e.g., removal of support, collapse)

Separate section or extension to contractors' PL

- Joint names of the employer and the contractor
- Arranged by contractors with their insurer
- Paid for by employer



Contractors all risks - JCT clause

6.5.1. non-negligence liability

Usual exclusions for loss or damage:

- Arising from negligence (covered by the contractors' public liability policy)
- Which is inevitable/unavoidable
- Resulting from the design of the works (falls under designer's professional indemnity policy)
- Otherwise insured by the employer

Excess

- Paid by employer



Contractors all risks - financial loss

Claims for pure economic loss (financial loss) in negligence cannot be made except under a contract

Liability for financial loss not covered but may have exposure

- Undamaged but defective products e.g., adhesive surfaces which fail to stick
- Costs of recovering / extracting defective products that have been built into another product or structure

Cover

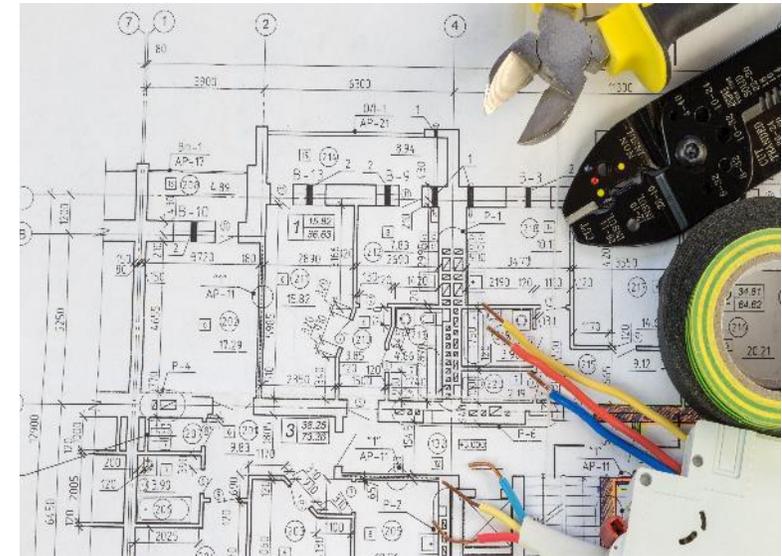
- Claims made extension/section with retroactive date
- Watch for efficacy exclusion – failure to perform intended purpose
- Rip and tear - cost of tearing out and replacing a contractor's bad work due to defects that make its inclusion in the project unsafe



Design and build professional indemnity

Contractors also have a professional indemnity exposure – design liability

- contracts on a design and build basis when contractors' employees do design
- design alterations during a build (very common)
- design checking services – failure to double check designs to ensure they work can lead to a claim
- temporary works left to contractor e.g., scaffolding, access roads, perimeter fencing, storage facilities
- unsuitability of materials
- duty to warn the client of any problems or errors



Design and build professional indemnity

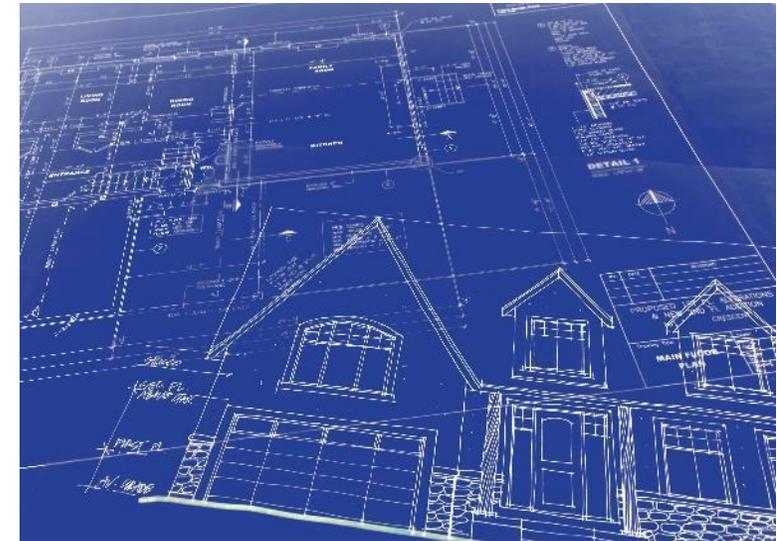
Covers professional elements of work only

- Check policy definitions of professional activities/duties
- Can be hard to separate design from poor workmanship
- Supervision of own work usually excluded
- Place with same insurer as PL/Financial loss if possible

Some elements of design may be sub-contracted

- Ensure policy covers negligence of sub-contractors (may be optional extension)

Rarely on civil liability basis – restricted to negligence



Contractors' all risks

Hard market – risk management is key

Seeing conditions added to policies

- Joint Fire Code conditions (applies to all projects above £2.5m)
- Storage of materials - theft risk, site security
- Managing Escape of Water Risk on Construction Sites e.g., automatic water shutoff valves
- Cladding – fire risk, heat conditions

Timber– framed buildings – may have JFC conditions added

Removal of low-claims rebate

Reducing defect cover available



Broking information required

How long firm has been in business

- Names and experience of directors (CCJs)
- Claims experience

Detailed description of type of work undertaken

- Position in contract chain (main contractor or sub-contractor)
- Usual contract conditions
- Maximum contract size
- Split between work in/on new build and existing buildings

Turnover - last 5 years turnover, split between

- Contracts where the Employer is responsible for insuring
- Types of locations worked at
- Work involving use of materials containing asbestos
- Work above 10M from ground level / below 1M



Broking information required

Details of work involving the use of timber frames/modern methods of construction

Details of employee and site risk management

- Does insured act as site controller?
- Site security

Estimated maximum exposure any one site

Details of plant

Estimated maximum exposure for own / hired in plant on site/own premises

- Annual hiring charges



Objectives Revisited

At the end of this session delegates now:

- are aware of what a Contract Works policy covers,
- know how the design defect exclusions apply and what cover is available
- understand what liability cover a contractor requires

Thank you! Questions?

Contact:

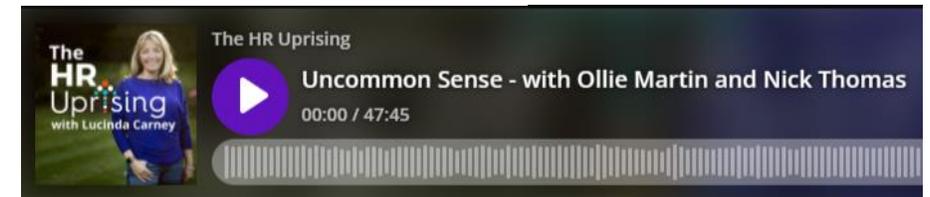
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'Up to the minute training solutions addressing the challenges of the modern insurance professional'

The logo for HRUprising, with 'HR' in purple and 'Uprising' in a lighter purple, where the 'i' is a colorful dot-matrix character.

[Click here](#) to listen to Nick's latest podcast appearance on 'HR Uprising' talking about workplace performance, resilience and health