Insurance Marketplace Newsletter – Winter 2006-2007

Topic - Project Risk Management – Liability Insurance

If you are the owner, developer, or general contractor on a large construction project, you have probably noticed that in addition to premium increases, coverage is becoming more restrictive and the application and quote process is much more involved. This newsletter addresses what to possibly expect and watch for.

Insurance Marketplace

There are specialized insurance markets for various types of projects. Markets that have a risk appetite for commercial projects may not be interested in residential. Insurers with a risk appetite for residential such as rental apartments, may wish to have no part of Condominium or Co-op projects. Those that seek large renovation projects, may wish to have no part of ground-up construction. Geographic areas can make a difference. Many companies will not write any type of business in areas that are prone to catastrophes such as flood, windstorm or earthquake. The insurers that will write coverage at the best price and coverage terms are often Excess & Surplus Lines (E&S) insurers who are non-admitted, yet authorized to do business in your state. Many of the E&S companies do not maintain high A.M. Best financial ratings. Many top rated insurance companies have set up Non-admitted subsidiaries to write construction business. This includes AIG, Zurich, ACE, ARCH, Liberty Mutual and Chubb. This is done in order to allow the non-admitted subsidiary to write coverage on forms that they wish to utilize without requiring approval from the State Insurance Department.

The insurance broker selected should have specific expertise. Larger brokers may have departments or individuals with specific construction experience. There are a select few smaller brokers with particular specialty in construction and some rely solely on wholesalers.

General Liability Coverages

In recent years, insurers have been reducing or attempting to reduce the breadth of coverage they are providing. For many companies that develop properties and then maintain ownership of them, the owned and fully developed properties need to have a separate program from those under construction, as the program for the owned and fully developed properties will often exclude all construction other than routine maintenance and may exclude Products and Completed Operations coverage. On the construction side, the following types of exclusions or limitations are becoming commonplace.

- Subcontractors Endorsement – Excludes or applies a high deductible to the Owner, Developer, or General Contractors coverage if a loss arises from a subcontractor who does not have a written requirement to indemnify the Insured, has not named the Insured as an additional insured, and has not evidenced a certain limit of insurance.
- Contractors Limitation Endorsement – Excludes among other things, property damage resulting from damage to underground wiring, pipes, cables, conduits, mains, sewers, beneath the surface of the ground or water.
- Subsidence Exclusions – excluding loss from settling, sinking, caving in or shifting of land or earth
- Designated Work Exclusion – Excludes providing coverage for certain work as specified. This can be residential homes, apartments, condos, co-ops. Must check this to see if any of your work fits within what is excluded
- Products/Completed Operations – generally extends to the end of construction. Claims of this type arising after the project is completed need to be covered with "Extended Products/Completed Operations". Extension to 5 years or the local statute of limitations is advisable, although not always feasible
- Excavation, Collapse, Underground (XCU) operations may be excluded.

This is just a small sample of exclusionary language to be careful of, but represents many of the newer, non-standard exclusions in policies today.

Application Process and Other Issues

Underwriters are requiring more information than in the past. Failure to provide comprehensive information on a timely basis relative to the Contractor's operations and future projects will affect their ability to obtain quotes.

Be alert to the following;

- Detailed applications are now required. Most insurers will hold back quotes without one. Those who don't may bind coverage with receipt of the application as a subjectivity.
- Copies of the general contract and other pertinent contracts, along with certificates of insurance are required.
- A 'terrorism election form" must be completed and signed even if rejecting the coverage. Coverage for TRIA (basically foreign terrorist acts) must be offered by the insurer and pricing varies. Insureds often reject TRIA unless required by the Lender or the project is in a high terrorist risk area such as New York City.
- Most policies schedule covered projects. If the project is not scheduled, it is not covered. In scheduling projects, specific information, (most notably the total receipts expected in the project or the total construction hard costs), need to be

provided. Scheduled projects must be checked for accuracy at the time of binding and on the issued policy.

- Policies are auditable. Underreporting will result in additional premium. Over reporting may result in overpaying premium. Most policies will not adjust downward more than 10% but will adjust upward unlimited.
- Broad named insured language is not always provided. Make sure to specifically schedule all partners, members, affiliates, subsidiaries, lenders, and other parties with an ownership or insurable interest in the project.

Umbrella/Excess Insurance

Underwriters for this type of insurance will quote based upon the premium for the commercial general liability insurance. The lower the primary insurance quote, generally the lower the umbrella/excess insurance and vice versa. The Umbrella underwriter will often “follow the form” of the primary insurance; however, it will often follow any additional exclusions added to the primary form as addressed above. In addition, the Umbrella underwriter may wish to add other exclusionary terms not in the primary policy. This should be vigorously opposed. It is important to have concurrent policy dates for both the primary and Umbrella/Excess programs

The insurance marketplace for Umbrella/Excess insurance is totally different from the Commercial General Liability marketplace. Most insurers writing construction risks will do either primary or Umbrella/Excess, but not both. Insurers who do write both have different underwriters involved in the process. E&S or non-admitted insurance companies write a substantial portion of the business.

The Umbrella/Excess premium may be auditable as well with a rate applicable to the projected total receipts or the project total construction value.

Suitable liability limits to purchase depend on many factors including location, size and scope of the project, Lender requirements, and available capacity and pricing. It is often most cost effective to utilize several insurers on a layered program to get to the desired coverage limit. Pricing for Excess insurance tends to become lower with each succeeding layer.

