



Property Casualty Insurers
Association of America
Shaping the Future of American Insurance

Construction Liability: A National Perspective

Oregon Construction Claims Task Force
June 28, 2006
David Golden, PCI

© 2006 Property Casualty Insurers Association of America

Insurance 101

- Without the sleeping pill effect!



© 2006 Property Casualty Insurers Association of America

PCI Property Casualty Insurers
Association of America
Shaping the Future of American Insurance

2

Coverage Matrix: “Basic General Liability”

- Also called “Manufacturers and Contractors Form” or “M&C Form”
- Premises and operations
- Operations in progress
- Bodily injury or property damage
- Requires negligence

© 2006 Property Casualty Insurers Association of America



3

Coverage Matrix: Commercial General Liability

- Premises and operations
- Products and completed operations
- Bodily Injury or property damage
- Requires negligence
- NOT covered:
 - Warranty
 - Breach of contract
 - Failure to complete
- Most defects are warranty/breach in nature

© 2006 Property Casualty Insurers Association of America



4

Coverage Matrix: Bond

- Completion and workmanship per Oregon bonding law addressed here
- Payment determined by Construction Contractors Board (CCB)
- Limited \$ to repair actual defect
 - Consequential damage to general liability if there is negligence

© 2006 Property Casualty Insurers Association of America



5

Coverage Matrix: 1st Party Warranty

- Builder covers directly
- Design, material, workmanship, latent defect
- 1-2-10 typical per American Actuarial
 - 1 yr. labor and materials
 - 2 yrs. electrical, plumbing, HVAC
 - 10 yrs. structural defect

© 2006 Property Casualty Insurers Association of America



6

Coverage Matrix: 3rd Party Warranty

- Separate contract
- Similar to service contract warranty
- Design, material, workmanship, latent defect
- Contractor's direct involvement varies
- Consequential damage subject for General Liability if negligent

© 2006 Property Casualty Insurers Association of America



7

OID Coverage Matrix

- Tools to address financial risks related to new construction
- Insurance is a financial risk transfer tool
 - Insurer assumes risk from many contractors in return for premium
 - “Spread of risk”



© 2006 Property Casualty Insurers Association of America



8

Underwriting: **What to Insure** at **What Premium**

- Predicting the future
- Classes or niches
- Understanding the actual operations and associated exposures
- Management quality
 - People, processes, materials
 - Loss control/prevention
- Claim experience
- What coverages to offer

© 2006 Property Casualty Insurers Association of America



9

Underwriting: **What to Insure** at **What Premium**

- Use historical claim experience to predict future claim dollars
 - Mix of individual vs. class varies
- Adjust for new materials, processes, etc., including new loss control services
- Adjust for legal trends
- Class rates, experience rating, schedule rating, loss-sensitive plans, etc.

© 2006 Property Casualty Insurers Association of America



10

Underwriting: What to Insure at What Premium

- Right mix covers losses, expenses (like loss control services), profit
 - Too high and competitor will undercut the price and take the contractor away
 - Too low and insurer loses money

Pulling the Matrix into a Cohesive Package

- Premises & operations addresses negligent bodily injury/property damage liability during construction
- Completed operations addresses negligent bodily injury/property damage resulting from the construction itself
 - Workmanship is a business risk retained by the contractor

Pulling the Matrix into a Cohesive Package

- Bonds assure performance (completion and workmanship) up to bond limit
- 1st Party Warranties: contractor guarantees workmanship
- 3rd Party Warranties: contractually service portions of express warranty not handled by contractor

© 2006 Property Casualty Insurers Association of America



13

The Matrix: Another View

- Assurance of completion: Surety Bond
- Guaranty of workmanship/quality: Warranty (1st and/or 3rd party)
- Consequential bodily injury/property damage (negligence): Completed Operations
- Worksite bodily injury/property damage (negligence): Premises & Operations

© 2006 Property Casualty Insurers Association of America



14

Construction Liability Claims: National Perspective

- Concentrated in multifamily construction
- Moisture intrusion and soil movement key ingredients
- Availability of insurance not a problem
- Affordability (rates) driven by claims

© 2006 Property Casualty Insurers Association of America



15

Construction Liability Claims: Oregon

- Smaller market than many states
- Challenge is affordability, not availability
- Task force has already addressed quality issue
 - Improved quality will reduce exposures
- Separate warranty and liability
 - Use the right tool for each need

© 2006 Property Casualty Insurers Association of America



16

Current Insurance Issues

- Notice & Opportunity to Repair laws
 - Effective only when process cannot become evidence in any later litigation
 - Treat warranty situations as warranties, not liabilities
 - Take time to show results as the laws generally apply only to construction completed after enactment

Current Insurance Issues

- Mandatory Loss Control discounts are not viable
 - Losses drive rates, not loss control
 - Loss control helps reduce losses
 - Loss control only indirectly tied to premium needed
 - One size does not fit all – exposures vary from contractor to contractor

Current Insurance Issues

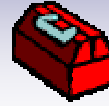
- Mandatory Loss Control discounts not viable
 - Underwriting requirement vs. pricing component varies among insurers
 - Loss control typically reflected in acceptability and/or pricing
 - Could actually make it harder for some contractors to obtain insurance

Current Insurance Issues

- Wrap-ups
 - Use care when considering wrap-ups
 - Can be good tools in right situations
 - BUT, must recognize that wrap-ups do not provide complete protection for subcontractors
 - Subcontractors must still maintain own insurance

Conclusion

- Use the right tool for the job at hand
 - See the OID Matrix
- American Actuarial's Conclusion:
 - “Moving defects from a fault based liability policy to a property based policy, such as a warranty policy, would provide homeowners guaranteed protection. Warranty policies typically cover all damages including the defect. In addition, the underwriting process associated with the issuance of warranty policies can provide incentives to builders to reduce the incidence of defects.”



© 2006 Property Casualty Insurers Association of America



21



Construction Liability: A National Perspective

Thank you!

Questions?

© 2006 Property Casualty Insurers Association of America