

SURETY BONDING & CONSTRUCTION RISK MANAGEMENT 2020 CONFERENCE

January 27-29, 2020 | Bonita Springs, FL



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**AGC's Surety Bonding & Construction
Risk Management 2020 Conference**

January 27, 2020

Working with OCIPs: Practical and Technical Strategies for Building an Effective Program

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OCIP coverages typically provide the following insurance coverages



- General Liability (offsite exposures excluded)
- Excess Liability
- Workers' Compensation and Employer's Liability
- Builder's Risk

OCIP Key Considerations



- OCIP policies are NOT standardized—each one should be carefully reviewed for coverage adequacy.
- Contractual implementation of a OCIP –contract language should be reviewed for limitations and potential gaps, responsibility of deductibles/self insured retentions (SIR's), safety requirements
- OCIPs should be listed as the primary coverage for project and noted in contract language.
- Who should provide Builder's Risk coverage?

Who Is the Insured?



- CIP policies will specifically designate covered parties as named insured
- The name insureds varies by line of coverage

Still Need a “Suit”: Insured Versus Insured/Cross Suits Exclusions



- “This Policy does not apply to a claim, demand or ‘suit’ for damages initiated, alleged, or caused to be brought about by a Named Insured covered by this Policy against any other Named Insured.”
- Exceptions for certain entities:
 - Owner, general contractor
 - *Examine exception carefully*: exclusion applies to a type of claim; exceptions often apply to parties

Builder's Risk – Insured Status/"Sole Agent"



The first Named Insured shall be deemed the sole and irrevocable agent of each and every Insured hereunder for the purpose of giving and receiving notices to/from the Company, giving instruction to or agreeing with the Company as respects policy alteration, for making or receiving payments of premium or adjustments to premium.

Trade Contract Claim Waiver



To the fullest extent permitted by law, Owner and Contractor waive ***all claims*** they may have against each other to the extent of coverage available under ***builder's risk*** insurance.

Builder's Risk "Cost of Making Good": An Important Complement to the Wrap

- LEG I – “Outright” Defects Exclusion
- LEG I – “Consequences” Defects Exclusion
- LEG III – “Improvement” Defects Exclusion

Completed Operations Extensions



1. The “bodily injury” or “property damage” is caused by an “occurrence” and arises out of the “covered project”.
2. The “bodily injury” or “property damage” occurs during the policy period or the “coverage extension period”.

What Does the Extension Include?



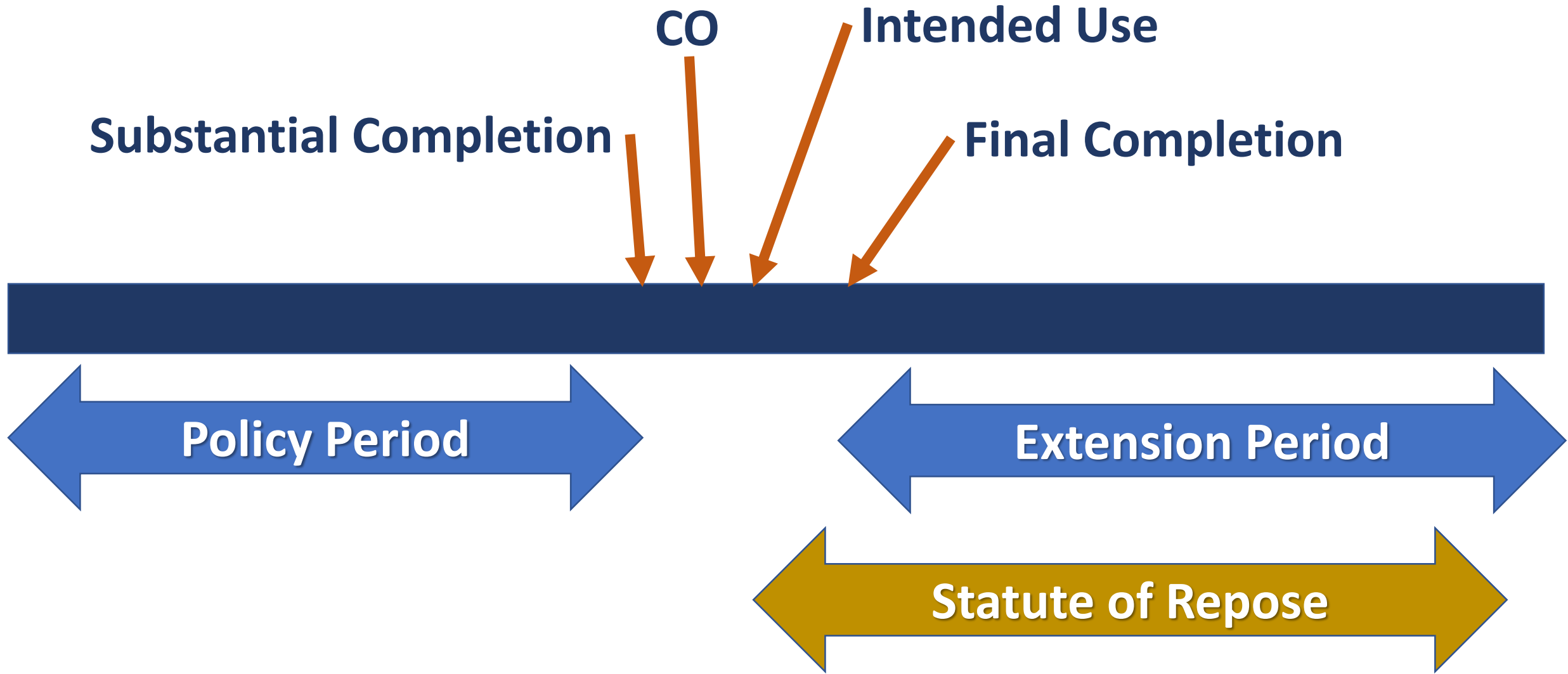
- All Liability?
- Just the Products-Completed Operations Hazard?
- Only Work Completed During Policy Period?

Problem – Specific Trigger Event



When Does the Extension Begin?

- Final Completion
- Put to Intended Use
- Substantial Completion
- CO
- Earlier of, or Later of, Listed Events



“Coverage extension period” means the period of time commencing with the end of the policy period and continuing until the last date on which suit may be filed against the insured for liability to which this insurance applies

Repair Work Endorsements



Solely with respect to liability for “bodily injury” or “property damage” not included in the “products-completed operations hazard”, the insurance provided by this policy is extended for an additional period of time with respect to liability for “bodily injury” or “property damage” arising out of “repair work”.

Repair Work Endorsements



- Extension of coverage for “repair work” for limited time
 - E.g., 2 years
- “Repair work” is repair of your completed work pursuant to a warranty obligation
- PCO Hazard does not include “repair work”

The PCO Hazard Applies to Completed Work



Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

Course of Construction (“Builder’s Risk”) Exclusion



- “This insurance does not apply to **any** ‘property damage’ to any project or any part of that project that occurs during the course of construction.”
- No defense; no indemnity
- Intended to avoid overlap with BR – too broad?

Subcontractor Warranty Endorsements



RISK MANAGEMENT REQUIREMENTS AND CONDITIONS FOR PROJECT SPECIFIC POLICIES

- Conditions for Named Insured's subcontractors
- What are the conditions?
 - Limits/contract and policy terms/indemnity/administrative burden
- What is the consequence of non-compliance?
 - Deductible/rescission/cancellation

Beware: Excess Follows Form, Except When It Doesn't



- Limits
- Attachment Point
- Policy Period (Incl. Extension)
- Other Insurance/Priority of Coverage
- Anywhere Excess Policy is Different

Questions?

