

## **WHO PROVIDES COVERAGE FOR RENOVATION or REMODELING WORK I'M DOING???**

Here is a real life story. Just imagine that a firm called Remodeling, Inc., bought an old building for the purpose of restoring it. The building was an old, three-story brick structure located in a small town. Stones were used as the basis for the three-foot thick basement walls. A mortar harder than the stones held the wall together. (We have long since forgotten how to make the mortar that was used prior to the development of cement.) All four of the basement walls were straight and level.

Because the basement and building walls were solid and straight, the new owner decided to keep the walls but replace everything else in the building. Floors, wall coverings, heating equipment, electrical, plumbing and everything else were removed, leaving only four bare walls.

Renovation work started on the first floor and was to continue upward. All of the construction work was happening simultaneously--carpenters, electricians, plumbers, and other trades people all working side-by-side. All of them were to be paid on the same timetable--all of the work that had been done during January would be inspected about February 1. Payment for the January work would be made about March 1.

The plumber was soldering some pipes by using a blowtorch. The heat from the blowtorch made the wood joist very hot and it caught fire. Because the fire started in the basement, no one noticed it until after it had been burning for quite a while. By that time, much of the first floor was engulfed in flames.

When the fire was finally extinguished, the only part of the structure that remained was the stone basement walls and the brick walls.

The plumber presented a claim to Remodeling, Inc for the value of the work it had put into the building. Remodeling, Inc responded that it did not owe anything because the contract between the two of them stated that Remodeling, Inc owed money to the plumber only after Remodeling, Inc had accepted its work. None of the plumber's work had been accepted at the time of the fire.

Next, the plumber presented a claim to its own insurer for the damaged work. The plumber's insurer denied the claim, saying that it did not have any coverage for the damaged property at the work site. The insurance agent then informed the plumber.

Remodeling, Inc did have coverage for some of the loss--damage was to the foundation of the building. Due to the heat of the fire and water used to put it out, part of the foundation had shifted. By the time the fire was out, water stood about six feet deep in the basement and had caused damage to the underground pipes and flues for the building. The damage to the foundation, pipes and flues was not covered per the coverage form used to insure the property. Coverage was being provided by a standard business and personal property coverage form.

Meanwhile, Carpenter, LLC, who was also working on Remodeling, Inc's property, presented a claim to its insurer, Coverage, Inc. The claim was for the value of the work it had done for Remodeling, Inc. Materials and labor was the essence of Carpenter's claim.

Upon receipt of Carpenter's claim notice, Coverage simply asked for documentation to demonstrate the size of Carpenter's loss. After receiving the documentation, Coverage issued a check for the entire amount of Carpenter's loss. The loss was paid under Carpenter's "installation floater".

Coverage was aware that the plumber had negligently caused the fire. So, after paying for Carpenter's loss, Coverage subrogated against the plumber. The insurer for Remodeling, Inc also subrogated against the plumber. The subrogation claims exceeded the plumber's insurance limits. As a result, the plumbing firm filed for bankruptcy.

There are several ways of dealing with the issue of subrogation at a construction site. One way is to have insurance limits that would cover any conceivable subrogation claim. Another way is for the project owner to provide property coverage for all of the subcontractors' work: Builders Risk &/or Installation policy.

To avoid fighting over who may or may not be at fault, contributing to or causing the loss, would be to waive the subrogation rights for every firm that is working on a project. This is commonly done by adding a waiver of subrogation rights clause to the construction contracts that are signed by every firm that does any work on the project prior to the start of any work.

Remodeling, Inc had been lining up tenants for the property. The fire loss would delay the occupancy date of the building, costing Remodeling, Inc some rental income. Some of the lost income was caused by the delay in occupancy, and some of the lost income was caused by losing prospective tenants.

Remodeling, Inc's owners inquired about insurance coverage for the lost rental income but learned that there was none. Also, there was no insurance available for the loss of rental income exposure.

Because Remodeling, Inc's owners had heard that the plumber's insurer denied its claim and Coverage had paid for Carpenter's loss, they talked to Coverage. The insurance company representative told Remodeling, Inc that all of the subcontractors could have had installation floaters which would have covered the subcontractors' work that had not been accepted by Remodeling, Inc.

Using a builder's risk policy instead of a building and personal property form would have provided coverage for the basement walls, pipes and flues. There are approximately 40 excluded types of property on a business and personal property form. By contrast, the typical builders risk contract has about three kinds of excluded property.

Adding the renovations form to a builders risk contract clarifies the coverage even more. It specifically defines those items that are covered when a building is being renovated.

Remodeling, Inc's loss of rental income could have been covered by loss of income coverage. Business income insurance is written for a renovation exposure in the same way that it would be written on any other construction project. It might be wise to include an extended period of indemnity along with the loss of business income coverage. The extended period of indemnity will allow the coverage to respond in the event some leases are lost due to the property loss.

It took some time for Remodeling, Inc and the contractors to decide how to deal with the damaged basement wall, pipes and flues. While they were considering the issue, the city inspector came and looked at the site. Within days, Remodeling, Inc received notice that the damaged wall, pipes, and flues would need to be replaced using modern construction techniques. This was going to add a lot to the cost to reconstructing the property.

The owners of Remodeling, Inc checked with their insurance agent to determine if there was coverage for this increased cost of construction due to the operation of building laws. Their agent told them that they did not have that coverage. The coverage that should be considered for this exposure is increased cost of construction due to building laws.

## **Summary**

A Builders Risk &/or installation floater policy with the proper endorsements should be considered to cover the material and labor. Review the renovations clause.

While it is not common practice on other than very large construction jobs, the project owner can provide property coverage for all of the subcontractors' work performance.

Subrogation can be an issue. All contractors on a given project are subject to having a subrogation claim brought against them. It is a good idea for a contractor to carry high insurance limits to protect against this type of a claim.

A project owner can put a waiver of subrogation clause in the construction contracts that are part of the construction agreement/contract with each of the subcontractors. This clause will prevent any insurer from subrogating against the other contractors/subcontractors.

Construction project for buildings that will be Income producing properties should consider Business income coverage needs.

Any restoration or remodeling projects should consider coverage building ordinance construction code updates, including demolition and increased cost of construction.

Review your total protection needs with a competent Insurance Agent who understands your industry, Protection and Coverage needs.