

I cannot tell you how many times I have told this story. Yes it happened to one of my contractor clients. Life is good when you get the contracts. My client Tom (not his real name) got the contract to build a 40 unit Motel for about \$1.5 million. It was going to be a nice place. Fortunately, for Tom, he bought a course of construction policy sometimes called a **builder risk policy**. One late night the partially built hotel caught fire. The building had been about 80% finished. The cause of the fire was a faulty heater the gas company had rented to the sheet rock sub-contractor to dry the new sheet rock. Total damage almost \$1million dollars. Tom's builder's risk insurance company paid to replace the structure and so he was made whole financially. Even though the loss added weeks to the construction timeline and it caused Tom to push back all his other projects.

Tom's contractors insurance company then sued the gas company, the sheet rock contractor and the fire department (the fire department is part of the story, no time for that now.) Three long years later the suit was settled with the Gas Company paying our contractor's insurance company most of what had been lost, less legal fees over \$200,000.

This entire event was an incredible hassle for Torn. Not only did he have to build the building over again, he spent days with his lawyer and hours testifying at hearings and in court about the incident. But in retrospect it could have been much worse.

Tom was smart; he bought the builders risk policy. If he had allowed the owner of the proposed new motel to buy the builders risk policy the owner's insurance company would have sued Torn along with the gas company, the sheet rocker contractor and the fire department. If that would have happened Tom would have had to have his General Liability policy respond and instead of going to court to testify with nothing to loose but his time he, would have been in court testifying on his own behalf with everything to loose including his house, kids college fund, savings accounts, his wife's vacation you name it....it would have all been on the line.

I recommend that every general contractor establish the follow guideline when looking to build any kind of building for anyone.

### **1. Always buy the builders risk policy:**

#### ***The reasons WHY real simple:***

1. Insurance companies don't sue their own customers if they have a claim.
2. Insurance companies will sue whoever is responsible for the loss. They find out who is responsible for the loss by suing everybody then make everybody's prove they had nothing to do with the loss.

If your customer has the policy and there is a claim, your customer's insurance company will try to recover from somebody. Guess what, you the General Contractor will be at the top of the "who to sue" list. Even if it is the sub-contractor that caused the loss. You the general will get sued for negligence in hiring the sub contractor who caused the loss.

Put yourself into Tom's shoes; think about how you would feel 3 months after the fire being

served a lawsuit by your customer. You might be thinking "I had nothing to do with the claim, I just spent 3 months busting my ass to get this project back on time and now I'm getting sued!" You would have the every right to feel that way. Remember your customer's insurance company is suing you on your customer's behalf. Needless to say your relationship with your customer will be harmed. Your lawyer will tell you not to talk to the customer for fear you will say something that will be used against you in court. It will be very hard to finish the job under those circumstances.

If you buy the insurance you are in control! Always structure your contract to give yourself the right to rebuild after a loss. If the customer has the money in their pocket they might fire you and hire someone else.

### **How much insurance to buy?**

The limit on the policy should be enough to completely restart the project from the beginning, total value, including permits, engineering fees, everything, plus an additional 10% for cleanup. If you are responsible you should also insure the value of the uninstalled materials on the job site. Yes, you need a separate limit for materials; they are not part of the building until they are installed. Materials can be damaged but more likely they will be stolen. You should also find out who is responsible for materials in transit to the job site. If you are, make sure your builders risk policy has a limit for "Property in Transit".

**Remodelers:** buy insurance on the entire building including the value of the addition. That way any damage to the original structure will be covered by your policy and does not need to be turned into the homeowner's policy. Don't forget the uninstalled materials, property in transit and 10% for clean up.

*Do Not Rely On Your General Liability Policy: (It's Got Exclusions) In plain english It may not be Covered!*

Million Dollar Tip Always have the subcontractor provide you with a certificate of insurance making you an additional insured on their liability policy. That way you will know if they let their policy cancel while on the job. With out the additional insured wording you might not find out until it is too late. After the loss you want your insurance company to have someone to recover from if they caused the loss. A high loss history will cost you money in the form of higher premiums you will have to pay your insurance company. You want to protect your business from financial loss. One way of doing this is to practice the time honored risk management technique "risk transfer" . **In plain english you make someone else responsible for that risk or loss.**

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