



Meltdown on Site  
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**Risk Management  
Broad Perspective**

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**Insurable Risks**

- routine insurance products
- esoteric and developing insurance products

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**Risks that can't be addressed by insurance products**

- gaps in insurance coverages
  - professional / claims based insurance coverage  
*Business in Vancouver*, February 15-21, 2005 "Even some veteran companies can't buy liability coverage" ...
  - e.g. performance bonds - after 2 year expiry
  - scope of coverage, exclusions
  - time limits

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**Risks that can't be addressed by insurance products (cont'd)**

- environmental
- subsurface conditions
- labour / liens
- tendering risk
- performance / simple failure to perform
- etc.

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**Other elements of risk**

- e.g. "RAIC Document 6" (architects) - standard limit of liability \$250,000
- ACEC 31 (engineers) – liability limited to insurance available (claims based – might be none) or if no insurance – "will re-do the drawings". Example - Save on Foods collapse ...

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**Other elements of risk (cont'd)**

- limits in contractual liability – e.g. time limits in CCDC 2. To illustrate, if contractor failed to have the specified formula for the concrete mix, for load bearing capacity, and the time limit has passed, then do you even have a right to be made whole (indemnified)? And if you do, what recovery might you have (will if risk that contractor exist in 11 years, or have any assets at that time)?

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**Other elements of risk (cont'd)**

- e.g. will the architectural firm be around, in ten years, or (see above) have insurance at that time.

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**Basics**

- recognize -- many areas of risks
- contracts can apportion or allocate, and hopefully rationalize and minimize risks. But there are core risks that cannot be eliminated.
- consultants, project managers, etc. - importance of "proficient and conscientious people"; importance of engaging people with good reputations, good track records, etc.

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**Basics (cont'd)**

- allocation of "insurable risks" - rationalizing contract documents, dovetailed insurance and contract documents. Often there is not a concerted effort to see that coverages, risks, release of liability / subrogation, and indemnities are dovetailed in the contract documents.
  - construction projects
    - among principal parties
    - among broader sphere of parties
  - e.g. shopping centre of office leases

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**Basics (cont'd)**

- risks should go where best able to manage them (i.e. best able to put in place measures to avoid a loss / minimize likelihood of a loss). Don't merely attempt to thrust risk on others, where not appropriate.

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**Basics (cont'd)**

- common sense prevails:
  - shift over the last decade away from "lowest bidder"
  - importance of good people, good resources, in risk management:
    - good project superintendents, managers ...
    - long established, large and profitable professional firms ...
    - reputable contractors (internal cultures, reputation, City of Nanaimo cases)

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**Basics (cont'd)**

- project insurance
- well drafted tender and contract documents
- complete drawings and specs
- critical path scheduling and monitoring. Who "owns" the slack in the schedule?
- sound schedule of values, etc.
- systems; contract administration forms;
- be vigilant, diligent, meticulous. Engage people who are vigilant, diligent, meticulous

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**Miscellaneous**

- “duplicitous liens” - waiver of liens solution
- bare trustee / beneficiaries issue

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These materials are necessarily of a general nature and cannot be regarded as legal advice. Clark Wilson LLP will be pleased to provide additional details on request. Inquiries or comments concerning these materials should be directed to Roy Nieuwenburg.

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