



# Builder's Risk considerations during the COVID-19 pandemic

*The COVID-19 pandemic is causing disruption and potentially lasting effects on the insurance marketplace. Specifically, in the construction industry, we have seen unprecedented actions in the past week:*



Projects being shut down by local municipalities to limit human contact and potentially curtail the overall spread of the pandemic



Project financing being withdrawn or revisited as lenders more closely scrutinize project viability



Forecasting of significant delays in the supply of materials both from international as well as domestic suppliers



Project starts are being delayed (or considering delay) in light of the general uncertainty in the macro environment

Disruptions such as these pose significant implications on the design, placement and response of builder's risk coverage for first party property damage and delay-in-startup exposures. The focus of this piece is to draw attention to key terms and conditions that could influence a policy's efficacy or response in these unprecedented circumstances. The placed policy is only one side of the equation, however, as heightened proactive measures should be implemented concurrently to mitigate the impact of any potential loss.

## Key terms and conditions relevant to COVID-19

In analysis of risk transfer avenues, the policy language remains the guidepost; however, for builder's risk, the coverage form is anything but uniform from one project (or from one carrier) to another. Brokers, markets and insureds must all be avid stewards of their policy language. Whether your project is impacted due to government ordered shut-downs, interrupted supply chains or delays in kick off or completion, a checklist of key items to revisit and review includes:

Concern	Coverage Review & Considerations	What should Risk Managers consider?
<p><i>Government ordered shutdowns of the project or work stoppage</i></p>	<p><b>Cessation of Work Exclusion or Limitation:</b> Many policies have a “cessation of work” exclusion or limitation which will void coverage if work is stopped for a reason other than what is outlined in the policy. Other policies may allow a cessation of work for a certain time period after which, coverage is void or is reduced.</p> <ul style="list-style-type: none"> <li>▪ This situation is arguably beyond the insured’s control so focus should be on advocacy against temporary suspension of construction activities during this period as a trigger for this exclusion. Either way, however it is highly recommended that the insured maintain and protect the project during the period when construction activities are suspended.</li> </ul> <p><b>Abandonment:</b> Similar to the cessation of work clause, some policies may contain an abandonment clause. Ensure that the situation related to your project does not constitute abandonment per the terms of the policy.</p> <ul style="list-style-type: none"> <li>▪ We anticipate most carriers will not consider the temporary suspension of construction activity due to COVID-19 as abandonment, however if the change in economic conditions results in the project being cancelled this condition could come into play.</li> </ul> <p><b>Increased Hazard:</b> The conditions section of the policy may contain an “increased hazard” clause which could void coverage if such increased hazard is not reported to the carrier.</p> <ul style="list-style-type: none"> <li>▪ Markets may consider the suspension of construction activities as a materially increased risk, therefore any foreseen shifts in schedule, scope, occupancy or values should be reported as soon as possible.</li> </ul>	<p>During a period of suspended construction activity, the following should be addressed:</p> <ul style="list-style-type: none"> <li>▪ Establish an open dialogue with your carrier(s) about the status, concerns, and measures you are taking. Being proactive will differentiate your risk.</li> <li>▪ Protect the site as much as possible, with enclosed and locked construction fences and site security with 24-hour watch service</li> <li>▪ Protection against wind and water damage (safety nets, bracing, covers, dewatering devices, etc.)</li> <li>▪ Temporary lighting shall remain illuminated</li> <li>▪ Stored equipment – follow manufacturer’s recommendations on maintaining idle equipment; temperature and humidity control, de-energize electrical equipment</li> <li>▪ Secure all cranes and other mobile equipment in accordance with manufacturer’s recommendations. Where possible all booms should be lowered.</li> </ul>
<p><i>Availability, changes or increased costs in the cost of materials or labor</i></p>	<p><b>Insurable Limits:</b> As potential disruption in the cost or availability of foreign or domestically sourced materials looms on the horizon, it is foreseeable that programs in place may be bound with insufficient insurable limit. The same can be said for the cost of labor associated with installation.</p> <ul style="list-style-type: none"> <li>▪ Most builder’s risk carriers will consider a coverage extension known as an “<b>escalation clause</b>”. Barring upfront known or foreseeable cost adjustments, this wording allows for an automatic increase in coverage limits should the final contract value exceed a stated percentage versus the original amount (typically 5% or 10%).</li> </ul>	<p>The escalation clause serves as a helpful backstop amid such uncertainty, however if new figures can be projected or subsequently manifest during the course and scope of construction, the best practice would be to report such changes as soon as practicable to the carriers to preserve the escalation clause for further, unplanned events.</p>

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<i>Difficulty securing policy period extensions</i>	<b>Project Term/Extensions:</b> It is unknown how long projects may be impacted due to COVID-19, but we anticipate it is likely many bound programs will need to be amended and coverage extensions will be required. This should be addressed as soon as possible with the carriers.	It is imperative for policyholders to document the current status of the project prior to any interruption, as well as the duration of any suspension, and the potential impact on the project schedule once construction operations restart. This degree of information will facilitate your appeal for extension amidst a potential influx of similar requests.
<i>Project Cancellation</i>	<p><b>Cancellation Provisions:</b> It is foreseeable that some projects could get cancelled during the construction phase or perhaps even before work commences.</p> <ul style="list-style-type: none"> <li>While some policies are “non-cancellable,” the most typical timeframe is 30-90 days cancellation except 10 days non-payment of premium. The policy will outline the terms by which the carrier can cancel or will govern the conditions applicable when the insured initiates cancellation.</li> </ul>	If changing economic conditions results in the project being terminated and <b>the insured</b> cancels the policy, a thorough understanding of the policy for any short rate penalties or minimum premiums that may apply is strongly recommended.
<i>Cost and contract certainty in the pre-bid or pre-award phase</i>	<p><b>Indication or Quote Expirations:</b> Independent of COVID-19 developments, project indications and quotations are not to be considered open-ended. The viability of pricing, terms and conditions is finite until bound.</p> <ul style="list-style-type: none"> <li>Carriers will advise of an expiration date for the quotation (30 days being most typical). The duration of quote validity could be negotiable on the front end should additional time be required pre-binding. Brokers and risk managers need to closely monitor timelines as project dynamics change.</li> </ul>	With engagement of your broker, risk managers should expect to revisit any builders risk quotes or indications received within the last six months to assure viability of pricing and coverage. Furthermore, insureds should be preparing stakeholders internally and externally for the potential of pricing adjustments in this evolving landscape. The marketplace is not static and the impact of COVID-19 could escalate further hardening.

## Additional coverage terms and conditions

As a result of the COVID-19 pandemic, there are additional coverage terms and conditions that are emerging and could be avenues for potential coverage (or concern):

**Civil authority:** The coverage typically applies when an insured is unable to access its property due to a government order as a result of physical damage to adjacent or nearby property. As with the dialogue surrounding delay/business interruption, the coverage trigger is physical damage from a covered cause of a loss. Can the presence of a pandemic adjacent to or nearby a construction site constitute physical damage?

**Vacancy clause:** While this clause is rare in builder's risk forms, it is prevalent in fixed property programs. This requires further evaluation and discussion in the event a construction project is covered via a fixed property program with a course of construction extension.

**Emergency property protection expense and other coverages:** Close attention should be paid to all coverage extensions of policy, in particular those with broad scope and definition. Some policies include an extension for “emergency property protection expense” which is intended to move property to a secure location or to protect property in place. While most policies reserve this coverage for ‘imminent risk’ and named perils (flood and windstorm), others are more open ended.

In addition to the risk transfer and risk management strategies described above, it is critical that risk professionals review contractual obligations regarding the impact on project scheduling attributable to the onset of COVID-19 and seek legal counsel accordingly. Insurance treatment of financial costs of project delays attributable to COVID-19 are nebulous. In conjunction with legal counsel, contractual language for both executed as well as contracts currently being negotiated, should be analyzed and carefully scrutinized and terms, definitions and risks relating to schedules and delays, cost overruns / escalation, substantial completion, force majeure and liquidated damages should be evaluated as well. Willis Towers Watson can provide guidance as to specific insurance requirements and availability coverage. During this pandemic, all associates of the company are supplied real-time updates to content and thought leadership and likewise all associates are here to review and address any concerns our clients may have with builder's risk placements in effect or under consideration.

#### **Disclaimer**

*Each applicable policy of insurance must be reviewed to determine the extent, if any, of coverage for COVID-19. Coverage may vary depending on the jurisdiction and circumstances. For global client programs it is critical to consider all local operations and how policies may or may not include COVID-19 coverage. The information contained herein is not intended to constitute legal or other professional advice and should not be relied upon in lieu of consultation with your own legal and/or other professional advisors. Some of the information in this publication may be compiled by third party sources we consider to be reliable, however we do not guarantee and are not responsible for the accuracy of such information. We assume no duty in contract, tort, or otherwise in connection with this publication and expressly disclaim, to the fullest extent permitted by law, any liability in connection with this publication. Willis Towers Watson offers insurance-related services through its appropriately licensed entities in each jurisdiction in which it operates.*

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