Mind the Gap

by Kevin J. Connolly and Robert M. Horkovich

Builders risk, general liability and workers compensation coverage are indispensable when managing the risks of a construction project. One set of exposures that sometimes goes unrecognized, however, is the risk of moving materials and equipment from a remote location, such as a factory or port, to the site and incorporating them into the work. Sometimes, these exposures are covered by the builders risk insurance, and sometimes not.

The gaps result from a variety of sources. Commercial property forms of insurance do not cover materials and equipment until they arrive at (or close to) the site. Inland marine forms are usually more generous, but it is not often available for interior projects.

Insurance policies that address these exposures are generally inland marine floaters, and include transit, storage and installation floaters. The term "installation floater" is sometimes used as a label for transit coverage that is built into a builders risk policy, and the frequency of that usage leads to confusion about what coverage applies and under which policies. It is not unusual to encounter a so-called "installation floater" in which coverage ceases upon arrival of the shipment at the worksite. The risk of loss during the actual installation of the equipment might not be found in every installation floater.

From the time that a shipment of goods leaves the seller's facility, the risk of loss is almost always allocated to the purchaser, regardless of when title to the goods is transferred. If the purchaser does not take steps to procure floater coverage at that point, there might not be any first party coverage on the shipment until it arrives as the construction site. Common carriers owe an elevated duty of care, and most claims for lost, damaged or misdelivered goods are honored, but "most" is not the same as "all," and a claim under a liability policy—even one as broad as a carrier's legal liability policy—is never as simple as a first party claim.

If the purchaser's sole concern is the transit risk, then insurance coverage can be put in place by calling for the contract to contain a "CIF" term. This means that the invoice price includes the cost of the goods, freight to the destination and inland marine insurance covering the goods while in transit. If the job site is unable to accept the goods when they arrive—usually because the work is behind schedule and there is nowhere on site to store them—then the goods will usually end up in a warehouse. The transit floater will not cover these goods unless is it endorsed to cover the storage risk. Before incurring the cost of that endorsement, purchasers should inquire of the warehouse keeper about the cost of purchasing first party coverage through the warehouse: it may be more economical.

One risk that is often overlooked is the peril of introducing bulky shipments into the construction site. Construction sites are typically fenced and gated in the interest of security. Certain shipments are sometimes too large to be brought through the gate. The solution may be to hoist the equipment over the fence, often employing a hydraulic boom crane. If there is an upset during the hoisting process, the owner of the project may find that insurance coverage is problematic. If the builders risk policy excludes "mechanical breakdown" as a covered cause of loss (and many of them do), then the insurance company may resist making payment, even though the property is close enough to the site to qualify as "covered property."

Even after the property is onsite, problems can occur during the installation, testing and commissioning process. For equipment that uses electrical, thermal or compressed gas as a power source, this is when failures are most likely to happen, and that is why many insurance policies exclude or limit coverage.

The solution to these problems, especially when the objects involved are valuable or sensitive to mishandling, may be to secure a true installation floater policy. This is a dedicated inland marine policy that covers the materials or equipment from the time it is shipped to the site until it is installed, tested, commissioned and accepted for service. This avoids problems due to property not being covered, excluded causes of loss, and problems about which of several policies will be primary. The installation floater is not required for every project, but risk managers at high-value installations should always consider this specialized kind of coverage. ■