Hot Topics ‘25

Contracts and Risk

Jason Kosek
Diana S. Gliedman
Melissa T. Billig
Miranda Fischer

October 27, 2025 / 2:30 – 3:15

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Jason Kosek

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Jason Kosek is a shareholder in Anderson Kill's New York office. He assists clients in a broad array of issues, including insurance coverage, regulatory, FCPA, labor law, negligence, nuisance, trespass, products liability and breach of contract, with a focus on construction and regulatory matters.

In construction matters, Jason has represented owners, general contractors, subcontractors, suppliers and materialmen in all phases of business and construction matters, including liens, contract negotiation and disputes, construction defect litigation and transactional matters. He has experience in complex litigation matters, including defects, delays and design professional malpractice. Jason serves as an outside general counsel to a variety of companies in the construction industry.

His insurance coverage experience includes disputes over construction claims relating to additional insured status, Directors and Officers claims, and business interruption claims. Jason's recent articles address Mechanic's Liens and an analysis of the insurance coverage implications stemming from the Surfside Condominium collapse.

In regulatory matters, Jason has represented clients served with SEC subpoenas and has extensive experience working with the Department of Justice in federal FCPA cases, as well as with federal and state regulators in antitrust cases.

Jason's insurance recovery experience includes drafting complaints seeking declaratory relief for policyholders; drafting and arguing discovery and summary judgment motions; drafting appellate briefs; and managing all aspects of litigation, including discovery and depositions.

While in law school, Jason was a Volunteer Student Intern with the United States Attorney's Office, Southern District of New York where he wrote appellate briefs for the Second Circuit as well as conducted research on plea agreements and mutual mistakes. He was Associate Editor of the Fordham Journal of Corporate & Financial Law (Volume XX), as well the recipient of the Archibald R. Murray Public Service Award.

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Diana S. Gliedman

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Diana Gliedman, a senior shareholder with Anderson Kill's insurance recovery group and a member of the firm's Executive Committee, has represented policyholders in multi-party, multi-issue insurance coverage disputes with an emphasis on Cyber, Comprehensive General Liability Insurance, Directors & Officers Liability Insurance, Property Insurance and Errors & Omissions/Professional Liability Insurance.

With extensive experience in litigation, arbitration and mediation, Diana prides herself on identifying potential coverage issues early and counseling clients to avoid pitfalls down the road in order to maximize insurance recovery as efficiently and cost-effectively as possible.

As co-chair of the firm's Restaurant, Retail & Hospitality Industry Practice Group, Diana frequently works with members of the retail and hospitality industries, providing representation and counsel to major retail chains, manufacturers, distributors, restaurants, hotels, resorts, theme parks and casinos with regards to insurance, indemnity other risk transfer issues. Diana is the editor of Anderson Kill's Restaurant, Retail & Hospitality Alert newsletter and speaks frequently at industry conferences and events.

Diana is also a member of Anderson Kill's Sports, Media & Entertainment Group, and currently represents television networks, production companies, publishers and media groups regarding all aspects of insurance coverage, indemnity and risk transfer.

Since 2017, Diana has been a fellow of the American College of Coverage and Extracontractual Counsel. In 2023, Diana was recognized by Business Insurance magazine as a "Woman to Watch." In an interview with the magazine addressing Diana's accomplishments, one former client stated ***"She probably saved my entire career. . . .[she] is one of the best professionals that I've ever met."***

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Melissa T. Billig

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Tannenbaum Helpern

Melissa T. Billig is Co-Chair of Tannenbaum Helpern's Construction & Design Practice. Melissa is a broadly experienced transactional attorney, results-driven construction litigator and strategic counselor. She is adept at drafting and negotiating contracts and navigating the full range of issues that can arise during the development and construction of projects in New York City and across the country. Acting as a business partner, she advises real estate owners, developers, design professionals and construction professionals throughout the project lifecycle. She has extensive experience in risk management, claim avoidance and dispute resolution, including high-profile, multi-party contract disputes and defective design and construction claims. Her transactional practice also focuses on drafting and negotiating license agreements required to protect adjacent properties during construction.

Melissa has represented clients in conjunction with large to midsize development projects, including the Jacob K. Javits Convention Center expansion and renovation, the Governors Island Park project and The Culture Shed project at Hudson Yards. She has also represented clients in connection with exclusive residential renovations.

Prior to joining Tannenbaum Helpern, Melissa was a partner with Ingram Yuzek Gainen Carroll Bertolotti LLP. She has been consistently selected to Super Lawyers and has been awarded AV Preeminent Rating from Martindale-Hubbell. Melissa was also selected by New York Magazine as a "Top Women Leaders in the Law". Most recently, Melissa was named one of Crain's New York Business Notable Leaders in Real Estate and to City & State NY's Trailblazers in Building and Real Estate List.

Melissa is an active speaker, published author and CLE instructor. She currently serves on the Board, and is Founding Co-Chair of the Sustainability Committee, of the Women Builders Council. She sits on Tannenbaum Helpern's Diversity Committee and is a mentor to numerous attorneys in the Firm and other construction industry professionals. Through December 2022 and for over ten years, Melissa served as an active Member of the Board of Trustees for the Center for Architecture.

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Master of Disaster

Miranda is a recognized leader in New York's construction insurance and surety market, known for her deep industry expertise and unwavering client advocacy. She specializes in guiding firms within the AEC space through the complex political and operational landscape that defines building in New York.

Miranda's approach is grounded in partnership and trust. Clients know that when they call her, things get done. She is both a fierce advocate and a true collaborator, often going beyond the traditional role of a broker to support her clients' growth and long term success.

A respected voice in the industry, Miranda frequently organizes and participates in expert panels, develops educational resources, and appears on podcasts focused on construction and risk management. She authored Problematic Exclusions and Endorsements: The Ultimate Insurance Cheat Sheet for NY Risks, a free reference guide used by professionals navigating complex insurance language. In 2025, she was named Leader in Business & Finance under the Risk Management category by Long Island Business News.

Miranda serves on the Board of Directors for the Women Builders Council and Co-Chair of the Insurance and Surety Committee, is Treasurer and Officer for Professional Women in Construction, and contributes to several committees within the Subcontractors Trade Association, the Association of Builders and Contractors and New York Building Congress.

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TODAY'S AGENDA

Managing Risk

- Work Scope/Change Order Dispute
- Force Majeure
- Who owns the Work Product?
- Insurance Requirements
- Liability Limitations

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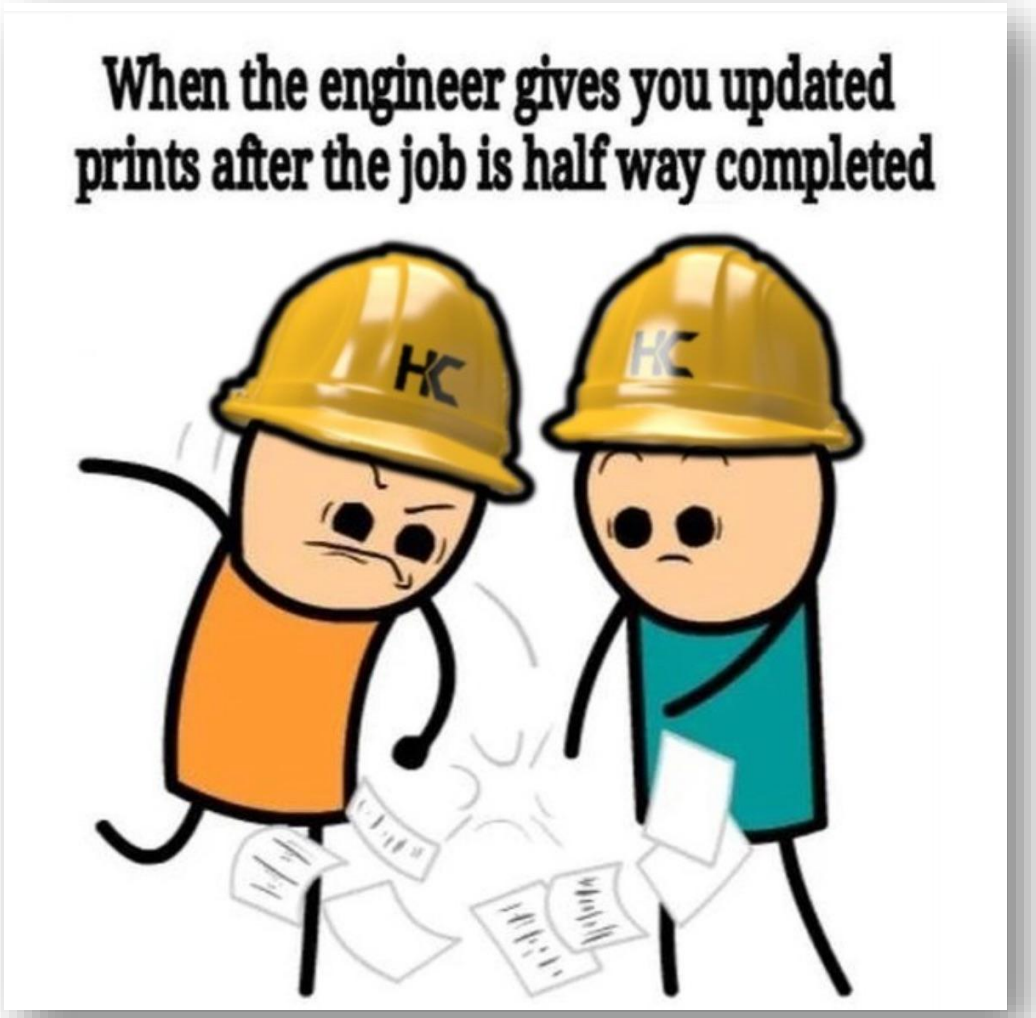
Managing Risk: Work Scope

- Work Scope/Deliverables
- Additional Services/Change Orders
- Cost Estimating & Redesign to Budget
- Initial Decision Maker Role



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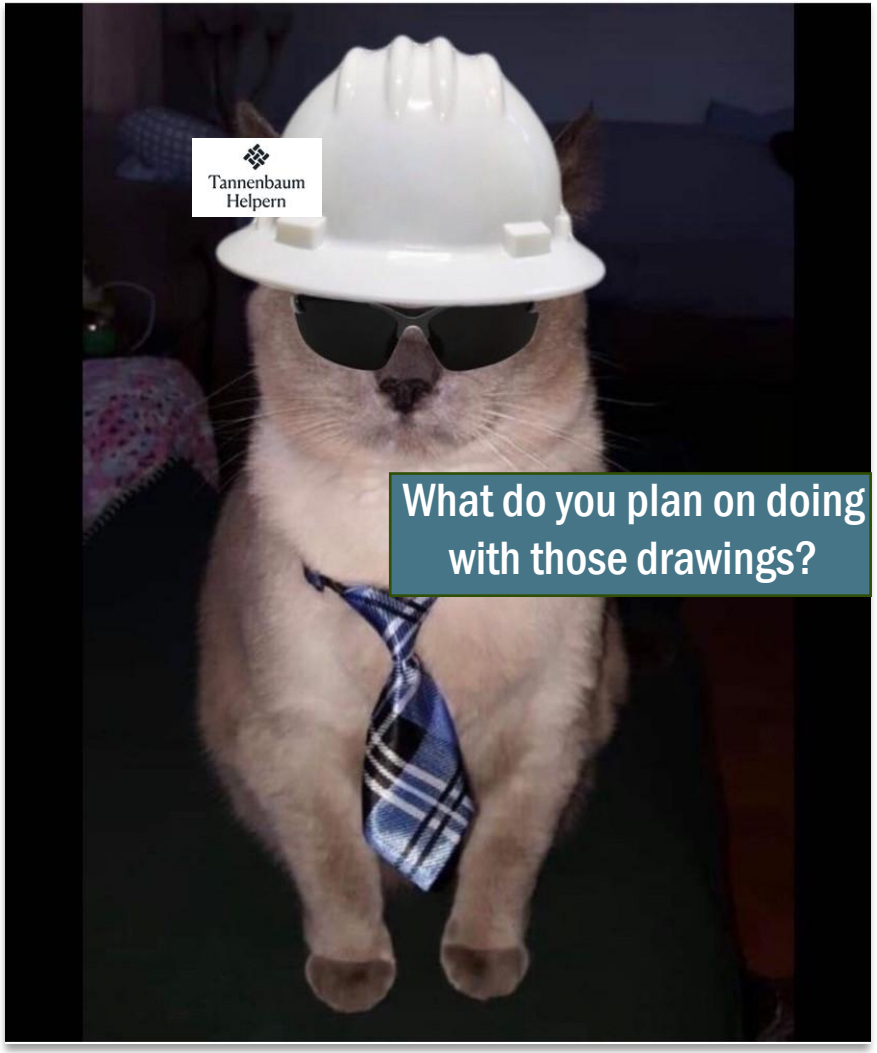
Managing Risk: Who Owns the Work Product?

- Works for Hire or License to Use?
- Indemnities or Release for Use or Misuse
- Use of Work Product After Termination



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Managing Risk: Insurance Requirements

- **Work with the Right Broker to Set the Right Program**
- **Problematic Exclusions & Endorsements**
- **Additional Insureds & Privity issues**
- **Indemnification Obligations & Risk Transfer**

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Managing Risk: Tips for Drafting an Airtight Contract

- What are your goals when you negotiate and sign a contract?
- Where does risk fit into the puzzle?
- What are your goals with respect to risk?
- Review and update your contract: does the indemnification and additional insured language accurately reflect the scope of the negotiated risk transfer?

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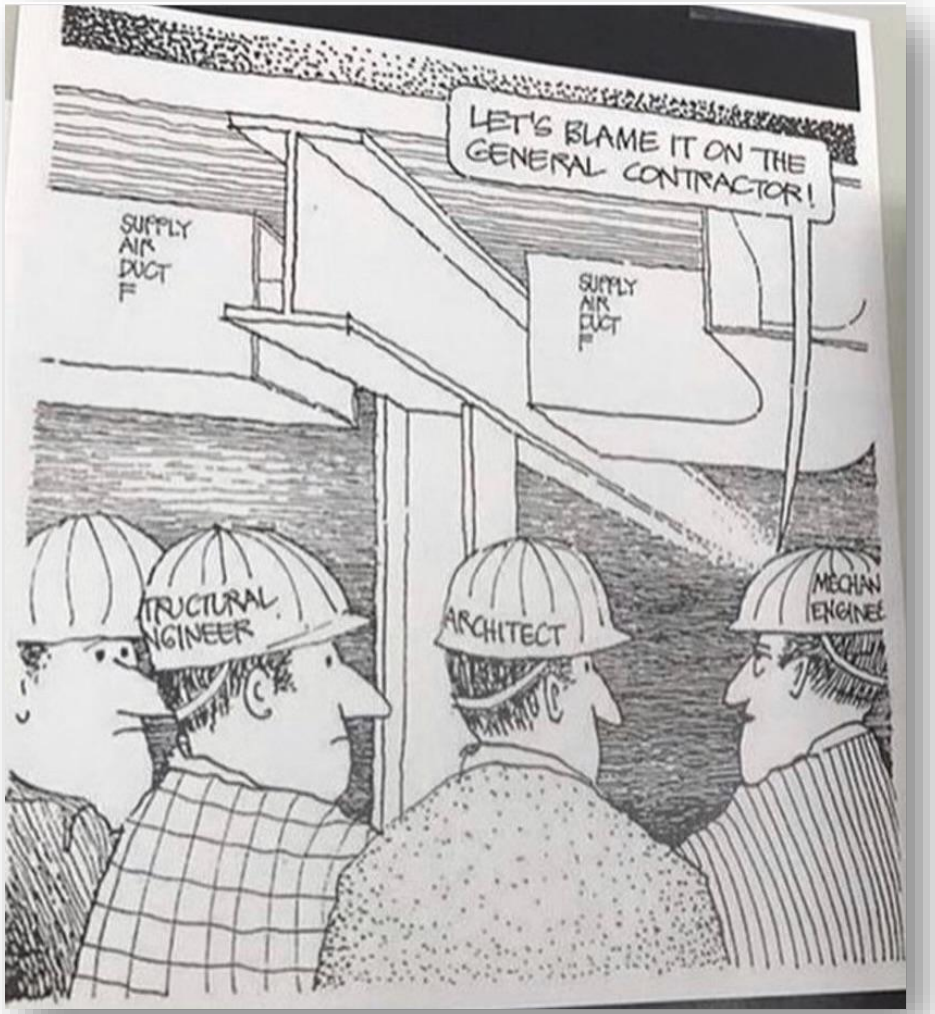
Managing Risk: Liability Limitations

- **No Personal Liability**
- **Waiver of Consequential Damages & Carve Outs**
- **Limitation Caps**



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Questions?

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Memes courtesy of:
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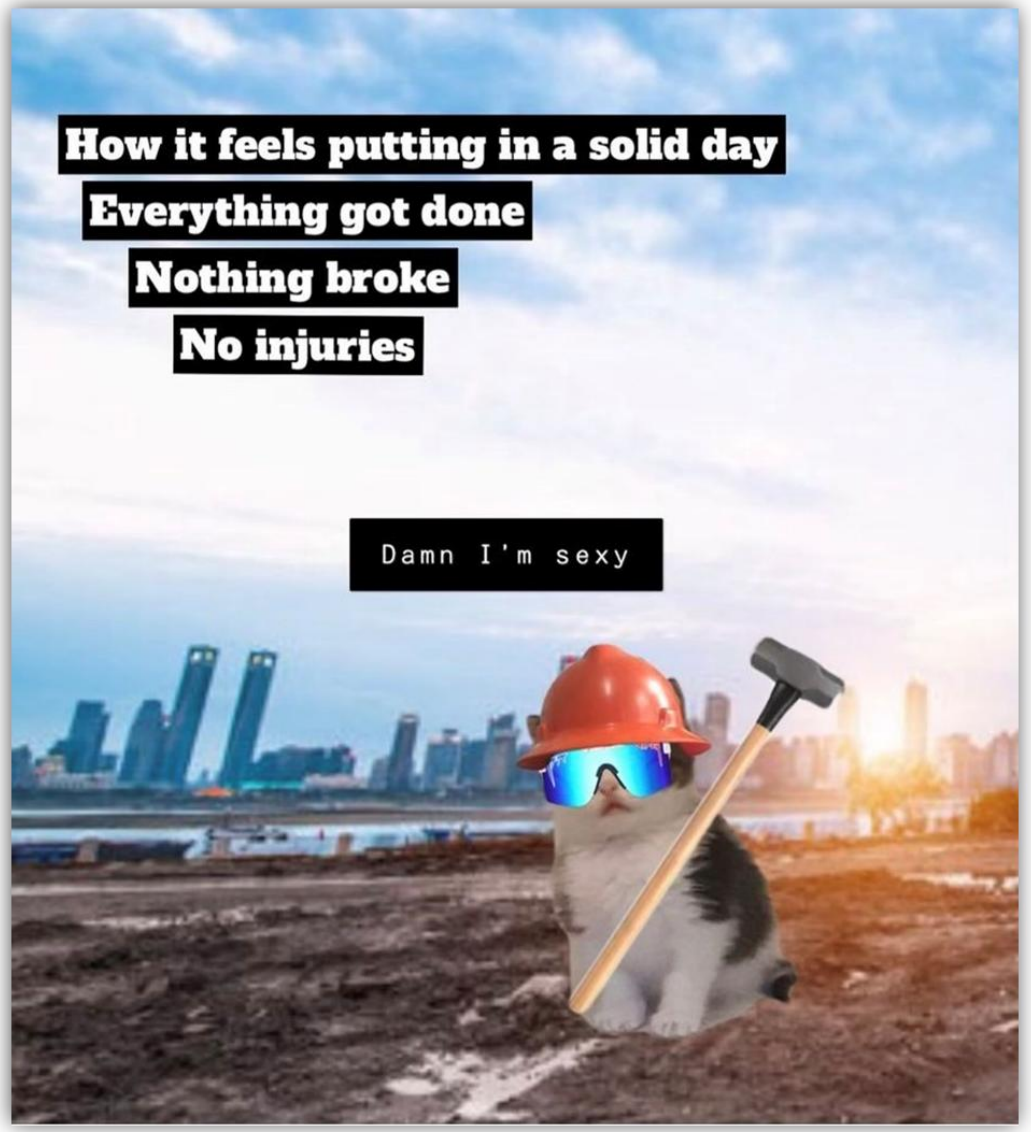

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Hot Topics ‘25

Social Engineering & Deepfake Fraud

Luma Al-Shibib
Jessica Mora
Deirdre Foley
Bridget Quinn Choi

October 27, 2025 / 3:15 – 4:00

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Luma Al-Shibib

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Luma Al-Shibib is a shareholder in Anderson Kill's New York office and Co-Chair of the firm's Cyber Insurance Recovery Group.

She focuses her practice on insurance recovery for corporate policyholders, with an emphasis on cyber liability insurance, crime insurance, directors & officers liability insurance, and other claims-made professional liability insurance.

Luma has secured hundreds of millions of dollars in recoveries for corporate clients in both litigation and prelitigation matters. She has obtained recoveries for losses from data breaches, ransomware and phishing attacks under all-risk property and crime policies as well as cyber policies.

Luma also has a background in bankruptcy and has represented clients in bankruptcy cases involving insurance claims, particularly in the context of claims under directors & officers liability insurance policies.

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Jessica Mora

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Jessica Mora is a seasoned insurance professional with over nine years of experience as a construction-centric broker, specializing in risk management solutions for the building industry.

Currently serving as a Sales Executive at AssuredPartners, Jessica brings deep expertise in navigating complex commercial lines and tailoring boutique manuscript coverage for construction firms.

She holds the prestigious designation of Certified Insurance Counselor (CIC), reflecting her commitment to excellence and continued education in the field.

Jessica is also a proud board member of NAWIC (National Association of Women in Construction), where she advocates for the advancement of women in the trades and supports initiatives that foster diversity and leadership in construction.

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Deirdre Foley

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Deirdre Foley serves as Associate General Counsel at Consigli Construction Co., Inc., a premier construction manager operating across the Northeast, Mid-Atlantic and Caribbean. In this role, Deirdre leads key legal and compliance functions, including contract negotiation, internal investigations and risk management. Her strategic guidance is instrumental in protecting the company's interests while enabling its continued growth and innovation.

Beyond her legal work, Deirdre is deeply committed to community engagement and industry advancement. She is a former President and current Board Member of Lynn Youth Street Outreach Advocacy, Inc., and serves on the Advisory Board of The Brave House, supporting young immigrant women. Within Consigli, she co-chairs the Women's Initiative Network, championing equity and leadership development across the organization.

Deirdre holds a Bachelor of Arts from the College of the Holy Cross and earned her Juris Doctor from Northeastern University School of Law.

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Bridget is the insurance product leader for Cyber, Privacy, and Technology practice group at Woodruff Sawyer a Gallagher company.

In her role, she brings her experience as a lawyer, cyber claims and underwriting leader and a cyber consultant to give clients a broad perspective on their cyber business risk and provide them a cyber insurance product that meets their specific business needs.

Before joining Woodruff Sawyer, Bridget was the Director of Cyber Incident Response and Resilience at Booz Allen Hamilton, a global cyber and technology consulting firm and government contractor, as well as general counsel for a cyber consulting firm. She has also led cyber claims and underwriting teams for various carriers.

Bridget regularly writes, teaches, and speaks on cyber, artificial intelligence privacy and corporate governance.

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CURRENT THREAT LANDSCAPE

- **Current Cyber Risks Facing Construction Companies**
- **Impact Of AI?**

Social Engineering Is Driving Loss

In Social Engineering Losses

$2.77B

in 2024 alone.

Source: **the FBI's Internet Crime Complaint Center**.

Cyber crimes involving spoofing and phishing

1 in 4

in 2024

Source: **the FBI's Internet Crime Complaint Center**.

5 Minutes

The amount of time it takes to create a believable phishing message

Vishing Surge

442%

In 2024

Source: Crowdstrike

AI Powered Social Engineering Attacks

88%

Up from 2024

Source: Resilience

54%

The success rate of AI-Generated phishing campaigns

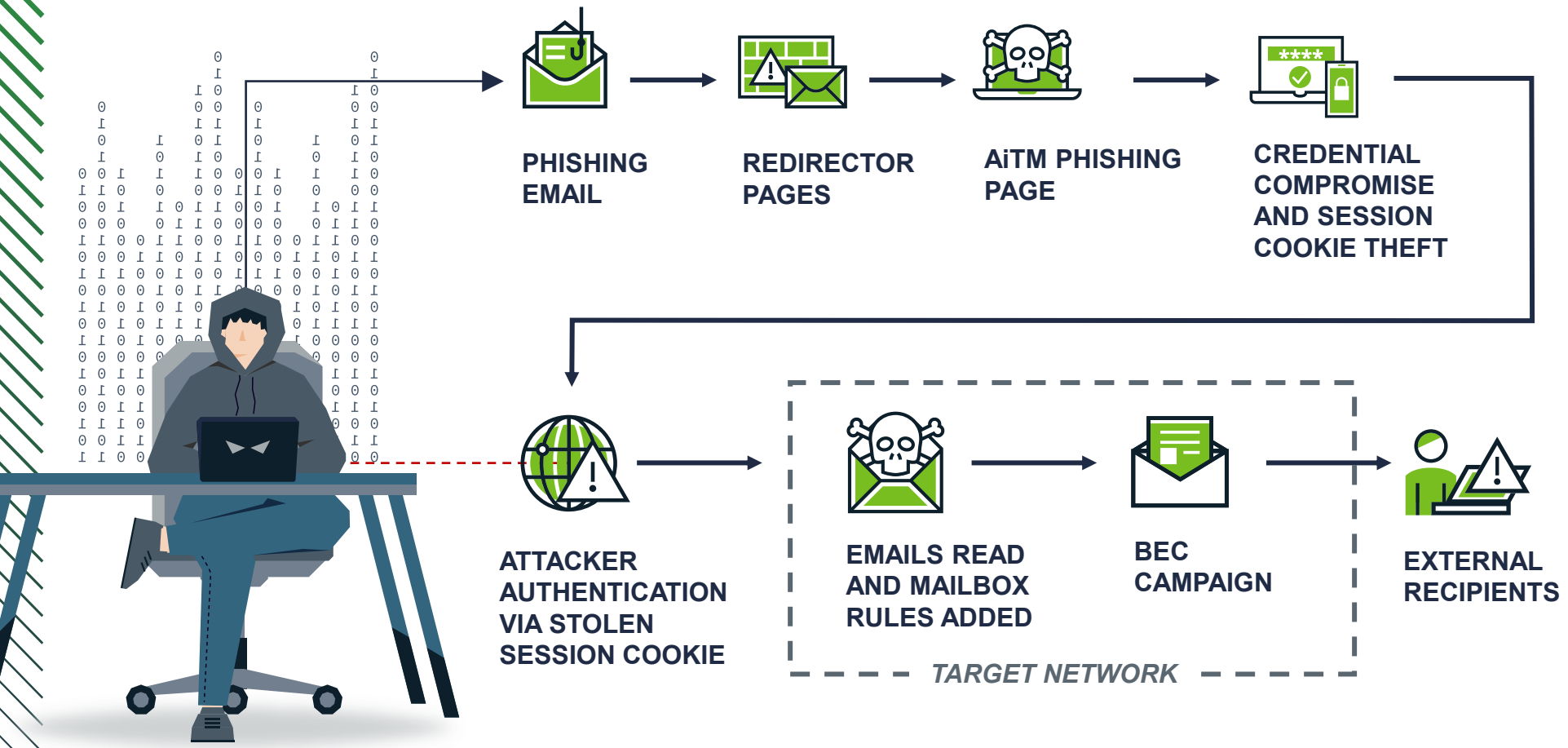
Source: Crowdstrike

1.8B

credentials were compromised in the first half of 2025—an 800% increase since January 2025.

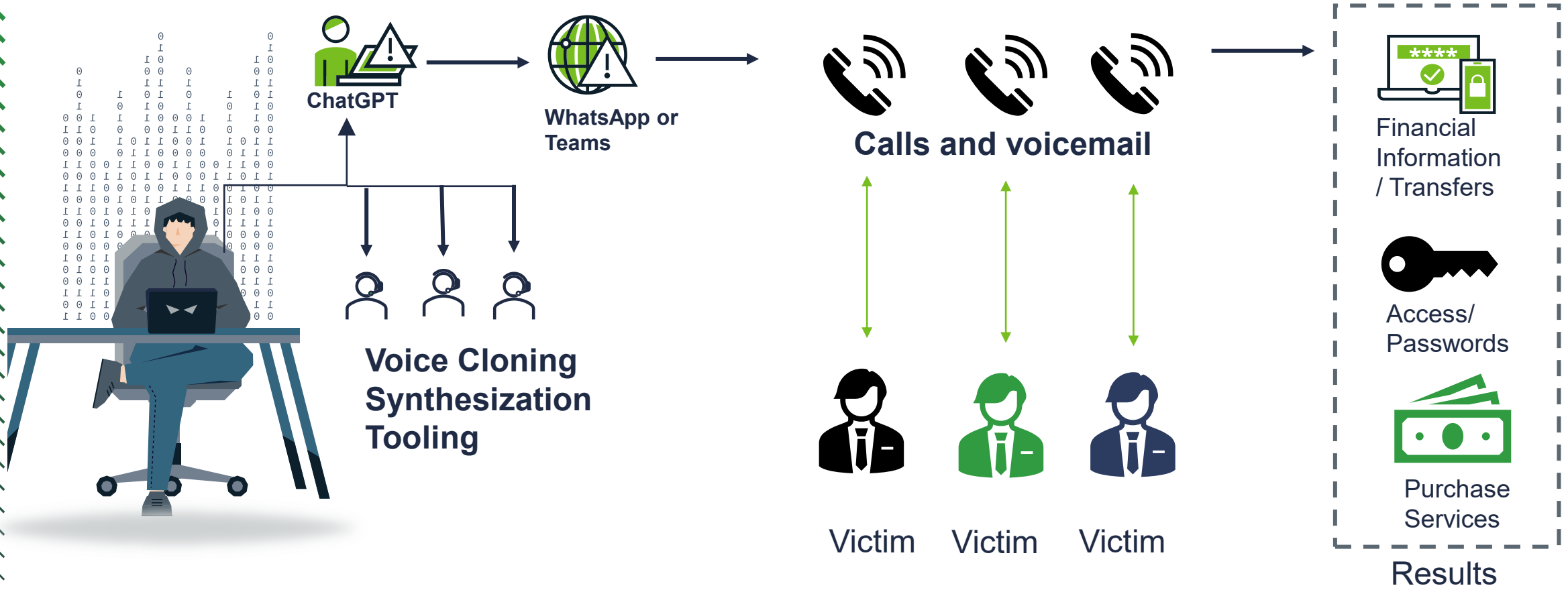
Source: Resilience Risk Operations Center (ROC)

How Social Engineering Attack Occur



More than half of all claims were **business email compromise** or **funds transfer fraud**, highlighting the importance of email security as a key aspect of cyber risk management.

AI Powered Voice Synthesis Attacks or a “DeepFake” are Successful



Risk Control: WhatsApp & Personal Emails
Ensure senior execs never use an external form of social media or communication method outside of company provided applications

INSURANCE, RISK TRANSFER & MITIGATION

- **What Policies Cover These Risks?**
- **Vulnerable Vendors?**

CONTROLS TO COMBAT SOCIAL ENGINEERING

Key Risk Management Controls

Mandatory Call-back Protocol

Implement dual authentication controls and segmentation of duties

Education – AI Awareness Training

Audit and test use of controls

Review insurance for coverage

The Financial Fraud Kill Chain (FFKC)

The FBI can recover funds if the following criterion are met:

- the wire transfer is $50,000 or above;
- the wire transfer is international;
- a SWIFT recall notice has been initiated; and
- the wire transfer has occurred within the last 72 hours.

CLAIMS

- **Common Requirements For Coverage**
- **Sublimits**

TIPS TO MAXIMIZE COVERAGE

Questions & Answers

THANK YOU

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Hot Topics ‘25

Climate Change & Builders Risk

Dennis J. Artese
Hope Kaufman
Ethan W. Middlebrooks

October 27, 2025 / 4:15 - 5:00

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Dennis J. Artese

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Dennis Artese is an Equity Shareholder in the New York office of Anderson Kill. He is co-chair of the firm's Climate Change and Disaster Recovery practice group. He also co-chairs the firm's and Construction Industry practice group.

Dennis's national practice concentrates on all types of insurance recovery litigation, with an emphasis on securing insurance coverage for property and business interruption losses stemming from natural disasters and other perils as well as for construction-related first-party property losses and third-party liability claims.

Dennis has substantial experience in all phases of litigation, arbitration and property insurance appraisals, and has recovered hundreds of millions of dollars of insurance proceeds on behalf of policyholders in connection with a variety of property, builder's risk, commercial general liability, umbrella and excess liability, D&O, E&O, crime, and political risk insurance claims.

Dennis is the General and Climate Change Insurance Editor of the *Journal of Emerging Issues in Litigation*. He has been recognized by **Super Lawyers** for Insurance Coverage since 2012. He also has been recognized by **Legal500 US** for Insurance Advice to Policyholders and singled out as being a "superb lawyer and subject-matter expert."

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Hope Kaufman

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Hope Kaufman embraces the intersection of true responsive, purposeful and results oriented client engagement and strategy focused on climate adaptation and strategic planning. She always leads with, "how can I help?" and has curated an industry wide reputation as a "connector and collaborator" throughout the NYC landscape.

Recognizing the need to meet clients where they are, her role as Associate Vice President, NYC Growth Officer is to align HNTB's mastery of planning, design and practice with the systems and processes that best enable tangible and meaningful engagement within New York City and New Jersey and to drive superior program performance within the New York City capital project landscape and beyond.

With over two decades of experience driving strategic growth and innovation across public and private sectors. She has spearheaded aligning enterprise strategies with client needs and market opportunities. Her leadership in strategic planning, government affairs, and account management has positioned her as a trusted advisor to public and private sector clients in NYC and beyond.

Prior to joining HNTB, Hope served in various high-impact positions within the City of New York, including Senior Advisor to the Commissioner and Deputy Chief Strategy Officer. She led agency-wide strategic planning and inter-agency coordination, unlocking over $60 million in annual program savings. Her work on resiliency, sustainability, and urban renewal initiatives—such as the transformation of a 700-acre landfill into a vibrant community space—demonstrates her ability to turn complex challenges into visionary outcomes.

Hope's commitment to community and environmental stewardship is reflected in her extensive civic involvement and recognitions. She has held leadership roles on multiple boards such as the Women Builders Council, served as a Democratic State Assembly candidate and elected executive board member of the Hunterdon County Democratic Committee, and was honored as an Outstanding Woman by the Women Builders Council in 2024. With academic credentials in Political Science, Landscape Architecture, and Urban Planning, Hope brings a multidisciplinary lens to every initiative she leads.

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Ethan W. Middlebrooks

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Ethan W. Middlebrooks is a Shareholder in Anderson Kill's New York office, where he concentrates his practice in insurance recovery, exclusively on behalf of policyholders. He is a member of the firm's Construction Group and Climate Change and Disaster Recovery practice group.

Ethan has assisted policyholders nationwide with insurance recovery on a range of matters, with an emphasis on third-party and first-party claims involving construction losses, and first-party property and business interruption claims. Ethan's practice also encompasses matters involving D&O liability, educational management liability, and public officials' liability, as well as non-insurance litigation. His clients include companies in the real estate, construction, energy, and hospitality industries. A member of the firm's Covid-19 Task Group, he is part of a team that won a decision in New Hampshire state court finding that the presence of Covid-19 caused "direct physical loss or damage."

Ethan has been recognized by **Super Lawyers** as a Rising Star since 2023 and by **Benchmark Litigation's** 40 and Under List.

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TODAY'S AGENDA

- **Climate change risks – impact on construction projects**
- **Risk Transfer – Builder's Risk Coverage**
  - Primer
  - Named Storms
  - Flood Sublimits
  - Physical Loss or Damage – Smoke and Heat

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Builder's Risk Coverage - Primer

- **Property Insurance for Construction Projects**
- **Typically purchased by Owner, but protects GC as well**
- **Key Coverages:**
  - All Risk Property Damage at replacement cost value, including reasonable OH&P
    - Typically includes materials and equipment on site intended to become a permanent part of the project
    - Expediting and Extra Expense
  - Time Element Coverages (Delay in Opening)
  - Soft Costs
    - Interest on construction loans, RE taxes, A&E fees, lease renegotiation costs, advertising expenses, insurance premiums
  - Rental Value
  - Business Income
    - Period of Delay – typically based on schedule slippage from projected completion date to actual completion date caused by covered event

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Climate Change and Builder's Risk

- **The Unpredictable Nature of Climate Risk in Urban Infrastructure**

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Climate Change and Builder's Risk (cont.)

- **Designing for Resilience: From Reactive to Proactive Strategies**

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Climate Change and Builder's Risk (cont.)

- **The Cost of Inaction: Builder's Risk as a Financial Wake-Up Call**

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"Named Storm" Deductibles

- **Many builder's risk insurance policies provide for higher "named storm" deductibles than standard per occurrence deductibles**
- **Named Storm Loss**
  - Total Project Values: $300 million
  - Named Storm Sublimit: $100 million
  - Named Storm Deductible: 5% of TIV
    - 5% of TIV at risk (i.e., $5MM) or 5% of total project values (i.e., $15MM)?
- **Compare *Terra-Adi Intern. Dadeland v. Zurich American Ins. Co.*, No. 06-cv-22380, 2007 WL 675971 (S.D. Fla. Mar. 1, 2007) (deductible applies only to the amount at risk under the Named Storm sublimit) with *Castle Oil Corp v. Ace American Insurance Company*, 137 A.D.3d 833 (N.Y. App. Div. 2016) (deductible applies to total project values)**
- **Choice of Laws can be outcome determinative**

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Downgraded Storms

- **Named storm deductibles**
- **At what point is a “Named Storm” no longer a “Named Storm”?**

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“Named Storm” Deductibles (cont.)

- **Definition of “named storm” can often be critical**
  - “hurricane, tropical cyclone, or tropical depression”
- **Sandy lost its tropical characteristics before making landfall**
  - NWS: Post-Tropical Cyclone
- **Some insurance companies still tried to enforce higher “named storm” deductibles, despite admonishments by governors of affected states not to do so**

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“Named Storm” Deductibles (cont.)

- ***AFP 104 Corp. v. Columbia Casualty Company*, United States District Court for the District of New Jersey (Civ. Action No. 13-4077)**
  - $800,000 worth of damage to resort and spa in Long Branch, NJ
  - Minimum $1 million Named Storm deductible
  - Policy defined “Named Windstorm” as:

A storm that has been declared to be a named tropical storm or hurricane by the U.S. National Weather Service or other government authority including hurricane or tropical storm spawned tornado(s) or microburst(s). The named tropical storm or hurricane … ends when the National Weather Service officially declares the named tropical storm or hurricane permanently downgraded to a tropical depression.

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“Named Storm” Deductibles (cont.)

- **Court denied insurance company’s motion to dismiss, holding that, if later proven to be true, plaintiff’s allegation that “[u]pon landfall in New Jersey, Sandy was characterized as a post-tropical storm,” easily establishes that the Named Storm deductible is not applicable to plaintiff’s claim**
- **Different result reached in *ARE-East River Science Park LLC v. Lexington Ins. Co.*, United States District Court for the Central District of California (Civ. Action No. 2:13-cv-01837)**

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“Named Storm” Deductibles (cont.)

- Policy defined “named storm” as “a storm that has been declared by the [NWS] to be a hurricane, typhoon, tropical cyclone or tropical storm”
- Court found issue of fact as to efficient proximate cause of loss: (1) post-tropical cyclone or (2) storm surge that developed when Sandy was still a hurricane
- Jury found in favor of policyholder and awarded attorneys’ fees, finding insurance company’s delay or failure to pay the full policy benefits was without proper cause

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“Named Storm” Deductibles (cont.)

- **Renewed legislation in NY to make application of “named storm” deductibles uniform, at least for homeowners/fire policies**
- **Bill A. 2729 passed Assembly on 4/8/14 with a vote of 144-0**
- **Mississippi enacted similar law in March 2024**
  - Hurricane starts when the National Hurricane Center issues a hurricane watch or hurricane warning.
  - Lasts as long as hurricane conditions exist anywhere within Mississippi's state borders
  - Ends 24 hours after the National Hurricane Center's last hurricane watch or hurricane warning terminates

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Flood Sublimits

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Policy Language is Key:

- Flood sublimits often are tied to “physical loss or damage,” which is different from a Time Element loss
- Business Interruption and other Time Element limits are often specified separately from flood sublimits
- Tremendous variations from one policy to the next
- Many confusing interactions among complicated clauses
- Ambiguity is resolved in favor of coverage

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Flood Sublimits

Not applicable to BI/lost rents unless explicit in policy

- ***Hanover Cas. Co. v. Seven Acres Jewish Care Servs., Inc.***
  654 S.W.3d 495 (Tx. Ct. App. 14th Dist. 2022)
- ***Alley Theatre v. Hanover Ins. Co.***
  436 F.Supp.3d 938 (S.D. Tex. 2020)
- ***Baylor College of Medicine v. Am. Guarantee and Liab. Ins. Co.***
  2002 WL 35644976 (S.D. Tex. Oct. 30, 2002)

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Flood Sublimits (cont.)

Can Limit Coverage for Storm Surge. Compare two Superstorm Sandy Claims Decided by Courts Across the Hudson:

- *Nat'l R.R. Passenger Corp. v. Arch Specialty Ins. Co.*, 124 F. Supp. 3d 264, 271 (S.D.N.Y. 2015), aff'd in part, vacated in part, 661 Fed App'x 10 (2d Cir. 2016).
  - Policy contained $125MM sublimit for "the peril of flood" – flood not defined. Court ruled that the plain meaning of "flood" encompasses "storm surge"
- *New Jersey Transit Corp. v. Certain Underwriters at Lloyd's London*, 461 N.J. Super. 440, 457–58, 221 A.3d 1180 (App. Div. 2019), aff'd, 245 N.J. 104, 243 A.3d 1248 (2021).
  - Because damage caused by a "named windstorm," defined in policy to include "storm surge and flood" associated with storms, losses not subject to flood sublimit.

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Flood Sublimits (cont.)
Surface Water on Roof

- **Insurance company attempt to expand flood to surface water on roofs**
- ***Zurich Am. Ins. Co. v. Med. Properties Tr., Inc.*** **237 N.E.3d 733 (Mass 2024) (holding that rainwater that landed and accumulated on hospital's rooftop courtyard and parapets during storm was not "surface water" as defined by policies)**

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Smoke Damage and Heat Coverage Issues

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Climate Change and Builder's Risk (cont.)

- **Smoke and Heat: Do they trigger coverage?**

- **Coverage Trigger: "direct physical loss or damage" / "direct physical loss or direct physical damage" / "direct physical loss"**
    - What about the unseen?
    - Cases before and involving COVID-19 have addressed.

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WBC WOMEN BUILDERS COUNCIL OPENING DOORS WIDER

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Climate Change and Builder's Risk (cont.)

- **Physical Loss or Damage Requirement**
  - Insurance companies argue that mere presence of COVID is not enough – need structural alteration
  - However, many courts have ruled that structural damage is not necessary.
    - Smoke, Airborne asbestos fibers, Chinese drywall odor, Methamphetamine odors, E. coli, Cat urine odor, Ammonia, Microscopic fungus on garments, Mold spores, Gasoline, Off-tasting soda, Carbon monoxide

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Climate Change and Builder's Risk (cont.)

New York take:

- "'Physical damage' must be understood to require a material physical alteration to the property—one that is perceptible, even if not visible to the naked eye."
- "'Direct physical loss' thus requires more than loss of use; it requires an actual, complete dispossession."

Consolidated Restaurant Operations, Inc. v. Westport Ins. Corp., 41 N.Y.3d 415,428-29 (2024)

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Climate Change and Builder's Risk (cont.)

Smoke Damage Coverage:

- *Another Planet Entertainment, LLC v. Vigilant Ins. Co.*, 15 Cal 5th 1106, 1117 (2024) ("Under California law, **direct physical loss or damage to property requires a distinct, demonstrable, physical alteration to property**. The physical alteration need not be visible to the naked eye, nor must it be structural, but it must result in some injury to or impairment of the property as property.")
- *Bottega, LLC v. Natl. Sur. Corp.*-Chicago, IL, 21-CV-03614-JSC, 2025 WL 71989 (N.D. Cal Jan. 10, 2025) ("Whereas a virus is more like dust and debris that can be removed through cleaning …, **smoke is more like asbestos and gases that physically alter property.**")
- *Gharibian v. Wawanesa Gen. Ins. Co.*, 108 Cal. App. 5th 730 (2025) (holding plaintiffs' smoke damage evidence was not sufficient to establish coverage based on the specific facts of plaintiffs' claim: "**Here there is no evidence** of any 'direct physical loss to [plaintiffs'] property.'")

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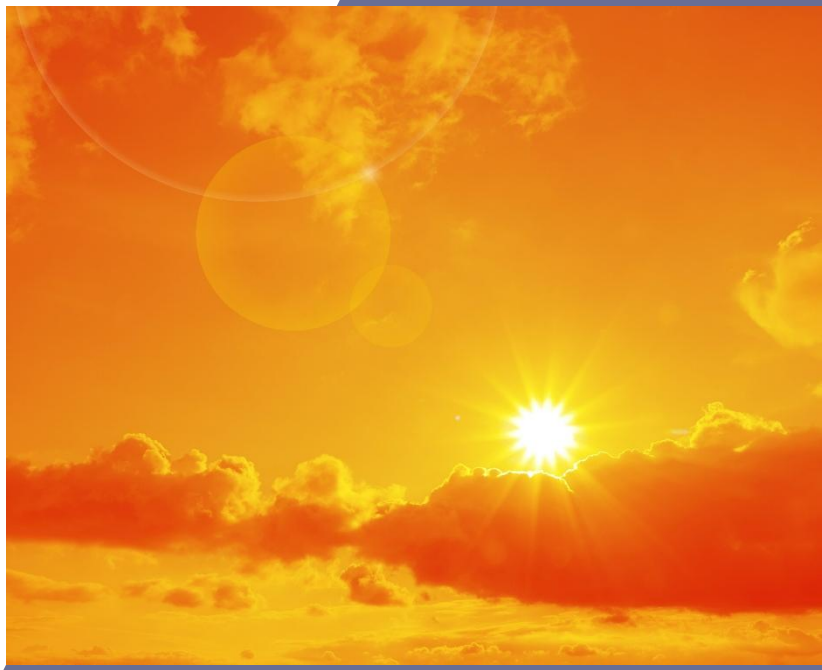
Climate Change and Builder's Risk (cont.)

Smoke Damage Coverage:

- On a construction project, what is the effect of smoke infiltration?

- Worker safety concerns—enough to trigger?
    - Worker's compensation



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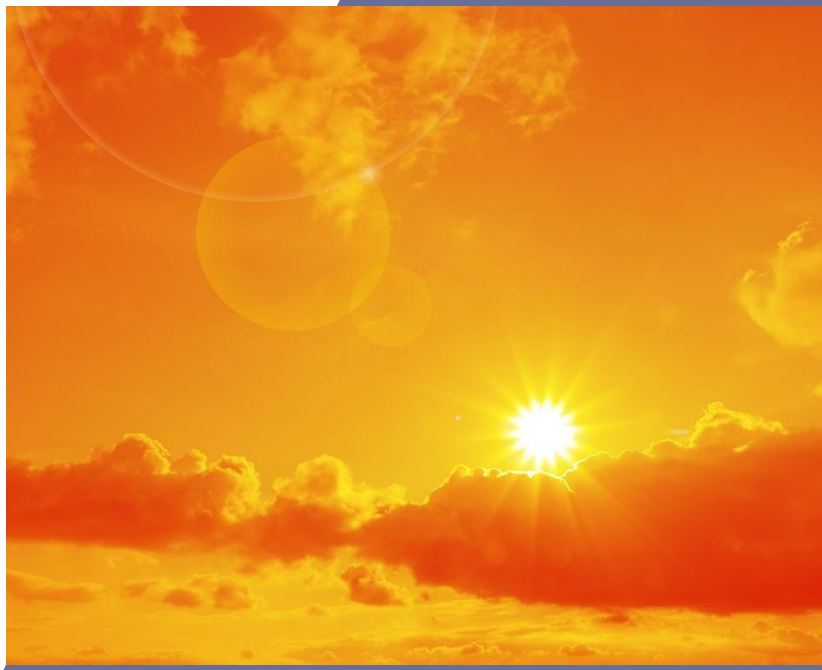
Climate Change and Builder's Risk (cont.)

Extreme Heat:

- Does extreme heat cause a physical alteration?

- Worker safety concerns
    - Worker's compensation



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Climate Change and Builder's Risk (cont.)

Extreme Heat:

- Alternative Risk Transfer: Parametric Insurance
  - A data-driven risk transfer – "if/then" scenarios.
  - Coverage triggered by independent event determined by neutral third-party data provider.
  - Pre-agreed payouts.
  - Being used for extreme heat events in overseas markets and starting to see in certain U.S. markets.

- A complement to gaps in Builder's Risk.

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Questions & Answers

THANK YOU

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