



The CGL Policy, COI's and Construction Risk Management

Matt Honea, CIC
Taggart & Associates

Topics

- **Commercial General Liability Policy**
- **Certificates of Insurance**
- **Insurance & Contracts**
- **Construction Defect**
- **Multifamily – Owner Controlled Insurance Policy (Wraps)**

Abbreviations

- ISO – Insurance Services Office
- CGL – Commercial General Liability
- UMB – Umbrella/Excess
- WC – Workers' Compensation
- COI – Certificate of Insurance
- NI – Named Insured
- AI – Additional Insured
- GC – General Contractor
- Sub – Subcontractor
- CD – Construction Defect
- BI – Bodily Injury
- PD – Property Damage

Insurance & Contracts



ABC Corporation hereby agrees to indemnify and hold harmless XYZ Corporation for any and all claims brought as a result of _____.

CGL Coverage



1) Occurrence

BI/PD must occur during policy period

2) Claims Made

BI/PD must occur during policy period

and

claim must be made during policy period

- Retroactive Date
- Extended Reporting Period

CGL Insuring Agreement



Agrees to pay those sums insured is legally obligated to pay as damages from a covered occurrence if the following conditions are met:

- 1) Must be the result of BI or PD
- 2) Must be a covered “occurrence”
- 3) BI or PD must occur during policy period
- 4) Must occur in the coverage territory
- 5) Must not be known prior to policy period

CGL Limits of Liability

Coverage	Limit
Per Occurrence	\$1,000,000
General Aggregate	\$2,000,000
Products-Completed Ops Aggregate	\$2,000,000
Personal & Advertising Injury	\$1,000,000
Fire Damage	\$100,000
Medical Payments	\$5,000

Insurance & Contracts



ABC Corporation hereby agrees to indemnify and hold harmless XYZ Corporation for **any and all** claims brought as a result of _____.

Standard ISO CGL Exclusions

- Aircraft, Auto or Watercraft
- Care, Custody & Control
- Employers Liability
- Pollution
- Product Recall
- Professional Services
- Your” product, “Your” work

Common CGL Construction Exclusions



- EIFS
- Residential, Multi-Family
- Roof, Height Limitation
- Subsidence, Earth Movement
- Subcontractors

Residential Exclusion - CGL



**This insurance does not apply to:
"Property damage" arising out of
any operations which involve
single or multifamily housing or
residential condominiums or
apartments.**

Height Limitation - CGL



**This insurance does not apply to:
"Property damage" or "Bodily
Injury" arising out of "Your work"
on any building that is proposed
to be over 3 stories in height.**

AI vs NI

NI

- “Owns” Policy
- Pays Premium
- Cancellation
- Changes

AI

- Rights depend on endorsement
- Protection limited to operations with or for NI

Additional Insureds - CGL



1) Added by endorsement, or

2) Provided by a provision in the policy that is triggered by an underlying contractual agreement

ISO AI Endorsements

CG 20 10 11 85	Your work (work in progress and completed work) - covers scheduled entities only
CG 20 10 (10/93, 03/97, 10/01)	Ongoing operations (work in progress) only - no coverage for completed work - covers scheduled entities only
CG 20 10 07 04	Ongoing operations (work in progress) only - no coverage for sole negligence of additional insured and completed work - covers scheduled entities and scheduled locations only
CG 20 37 10 01	Completed operations (completed work) only - no coverage for work in progress - covers scheduled entities only
CG 20 37 07 04	Completed operations (completed work) only - no coverage for work in progress or sole negligence of additional insured - covers scheduled entities and scheduled locations only
CG 20 10 04 13	Completed operations (completed work) only - no coverage for sole negligence of additional insured and completed work - coverage limited to the extent permitted by law and will not be broader than required by contract - covers scheduled entities and scheduled locations only
CG 20 37 04 13	Completed operations (completed work) only - no coverage for sole negligence of additional insured - coverage limited to the extent permitted by law and will not be broader than required by contract - covers scheduled entities and scheduled locations only
CG 20 33 10 01	Ongoing operations (work in progress) only - no coverage for completed work - coverage is automatic when required in a written construction contract
CG 20 33 07 04	Ongoing operations (work in progress) only - no coverage for completed work or for sole negligence of additional insured - coverage is automatic when required in a written construction contract
CG 20 33 04 13	Ongoing operations (work in progress) only - no coverage for completed work or for sole negligence of additional insured - coverage limited to extent permitted by law and will not be broader than required by contract - coverage limited to parties with contract privity
CG 20 38 04 13	Ongoing operations (work in progress) only - no coverage for completed work or for sole negligence of additional insured - coverage limited to extent permitted by law and will not be broader than required by contract - coverage not limited to parties with contract privity
CG 20 07 04 13	Ongoing operations (work in progress) only - no coverage for sole negligence of additional insured and completed work - coverage limited to the extent permitted by law and will not be broader than required by contract - coverage for engaged A/E/S is automatic
CG 20 32 04 13	Ongoing operations (work in progress) only - no coverage for sole negligence of additional insured and completed work - coverage limited to the extent permitted by law and will not be broader than required by contract - coverage for non-engaged A/E/S is required by contract - covers scheduled entities only
CG 32 29 06 10	Ongoing operations (work in progress) only - no coverage for negligence of additional insured and completed work - covers scheduled entities and scheduled locations only
CG 32 28 06 10	Completed operations (completed work) only - no coverage for work in progress or for negligence of additional insured - covers scheduled entities and scheduled locations only
CG 32 27 06 10	Ongoing operations (work in progress) only - no coverage for negligence of additional insured - coverage is automatic when required in a written construction contract
CG 20 07 04 13	Ongoing operations (work in progress) only - no coverage for sole negligence of additional insured and completed work - coverage limited to the extent permitted by law and will not be broader than required by contract - coverage for engaged A/E/S is automatic
CG 32 25 06 10	Ongoing operations (work in progress) only - no coverage for negligence of additional insured and completed work - coverage for engaged A/E/S is automatic
CG 32 26 06 10	Ongoing operations (work in progress) only - no coverage for negligence of additional insured and completed work - coverage for non-engaged A/E/S is required by contract - covers scheduled entities only

ISO AI Endorsements

1) CG 20 10 11/85

or

2) CG 20 10 07/04 and CG 20 37 07/04

or

3) CG 20 10 04/13 and CG 20 37 04/13

or

4) CG 32 28 06/10 and CG 32 29 06/10

Contractual Liability - CGL



Policy Excludes Contractual Liability, but provides exceptions:

- 1) Liability insured would have had in the absence of the contract
- 2) Liability assumed in an “Insured Contract”

Insured Contracts CGL

L.E.A.S.E.+

- Lease of Premises
- Easement Agreements
- An obligation to indemnify a municipality
- Sidetrack Agreements
- Elevator Maintenance Agreements
- + Tort Liability Assumed by Contract

Defense Cost - Indemnitees



- If Additional Insured
Supplementary Payments will apply
- paid in addition to limits
- If NOT, and contract requires,
policy will pay “reasonable legal
expenses” – within limits of
insurance



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
1/13/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

Taggart and Associates, Inc 1600 Canyon Boulevard P. O. Box 147 Boulder CO 80306	PHONE: (303) 442-1484 FAX: (303) 442-8622 E-MAIL: mhonea@taggartinsurance.com ADDRESS:
INSURED ABC Construction, Inc. 641 Main St Denver CO 80201	INSURER(S) AFFORDING COVERAGE INSURER A: United Insurance Company 21789 INSURER B: Western Insurance Company 18387 INSURER C: Colorado Mutual 41362 INSURER D: Environmental Underwriters 72019 INSURER E: INSURER F:

COVERAGES CERTIFICATE NUMBER: 16/17 Master (Revised) REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ITR	TYPE OF INSURANCE	ADDL SUBR INSD WGR	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIABT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJCT <input type="checkbox"/> LOC OTHER:	X Y	TS01613998	1/1/2017	1/1/2018	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPOF AGG \$ 2,000,000
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO ALL OWNED <input type="checkbox"/> HIREN AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	X Y	VT64440189	1/1/2017	1/1/2018	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per business) \$ Uninsured motorist combined \$ 1,000,000
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB <input checked="" type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR <input checked="" type="checkbox"/> RETENTION \$ B	X Y	CD01629642	1/1/2017	1/1/2018	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
C	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A Y	2172823	1/1/2017	1/1/2018	<input checked="" type="checkbox"/> PER STATE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	<input checked="" type="checkbox"/> POLLUTION LIABILITY		ENV18825301	1/1/2017	1/1/2018	EACH OCCURRENCE 1,000,000 AGGREGATE 1,000,000 RETRO DATE 1/1/2012

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Re: Project 22819, "Main St. Redevelopment" - XYZ Construction Co., Inc. is included as Additional Insured on General Liability, Auto Liability and Umbrella Liability. Coverage is on a primary and noncontributory basis and includes completed operations. A waiver of subrogation applies to General Liability, Automobile Liability, Umbrella Liability and Workers' Compensation in the certificate holder's favor. Should any of the above policies be cancelled before expiration, the issuing insurer to will mail 30 days written notice to the certificate holder at the address below.

General Liability policy does not contain exclusions for subsidence or residential construction.

CERTIFICATE HOLDER XYZ Construction Co., Inc. 743 E. 10th St. Greenwood Village, CO 80111	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE Matthew M Honea <i>Matthew M. Honea</i>
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Certificates of Insurance (COI's)

COI Disclaimer

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A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <div style="border: 1px solid red; padding: 2px;"> GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER: </div>		X	Y	TSO1613998	1/1/2017	1/1/2018	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPOP AGG \$ 2,000,000 \$
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS		X	Y	VT64440189	1/1/2017	1/1/2018	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ Uninsured motorist combined \$ 1,000,000
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 0		X	Y	COO1629642	1/1/2017	1/1/2018	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
C	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			N/A	Y 2172823	1/1/2017	1/1/2018	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	POLLUTION LIABILITY				ENV18825301	1/1/2017	1/1/2018	EACH OCCURRENCE 1,000,000 AGGREGATE 1,000,000 RETRO DATE 1/1/2012

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General Liability policy does not contain exclusions for subsidence or residential construction.

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COI's

CGL Aggregate Limit

GEN'L AGGREGATE LIMIT APPLIES PER:

<input checked="" type="checkbox"/>	POLICY	<input type="checkbox"/>	PRO- JECT	<input type="checkbox"/>	LOC
<input type="checkbox"/>	OTHER:				

CGL Aggregate Limit

\$0

Project 1

Project 2

Project 3

\$1,000,000

\$1,000,000

\$0



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COI's

Cancellation – Old Text

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL ___ DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER...

Cancellation – New Text



SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

Cancellation Provisions



Only a policy can obligate an insurer to provide notice of cancellation. Unless a policy's provisions explicitly provide for notice to a party also listed on the COI, the insurer is not obligated to notify that party.

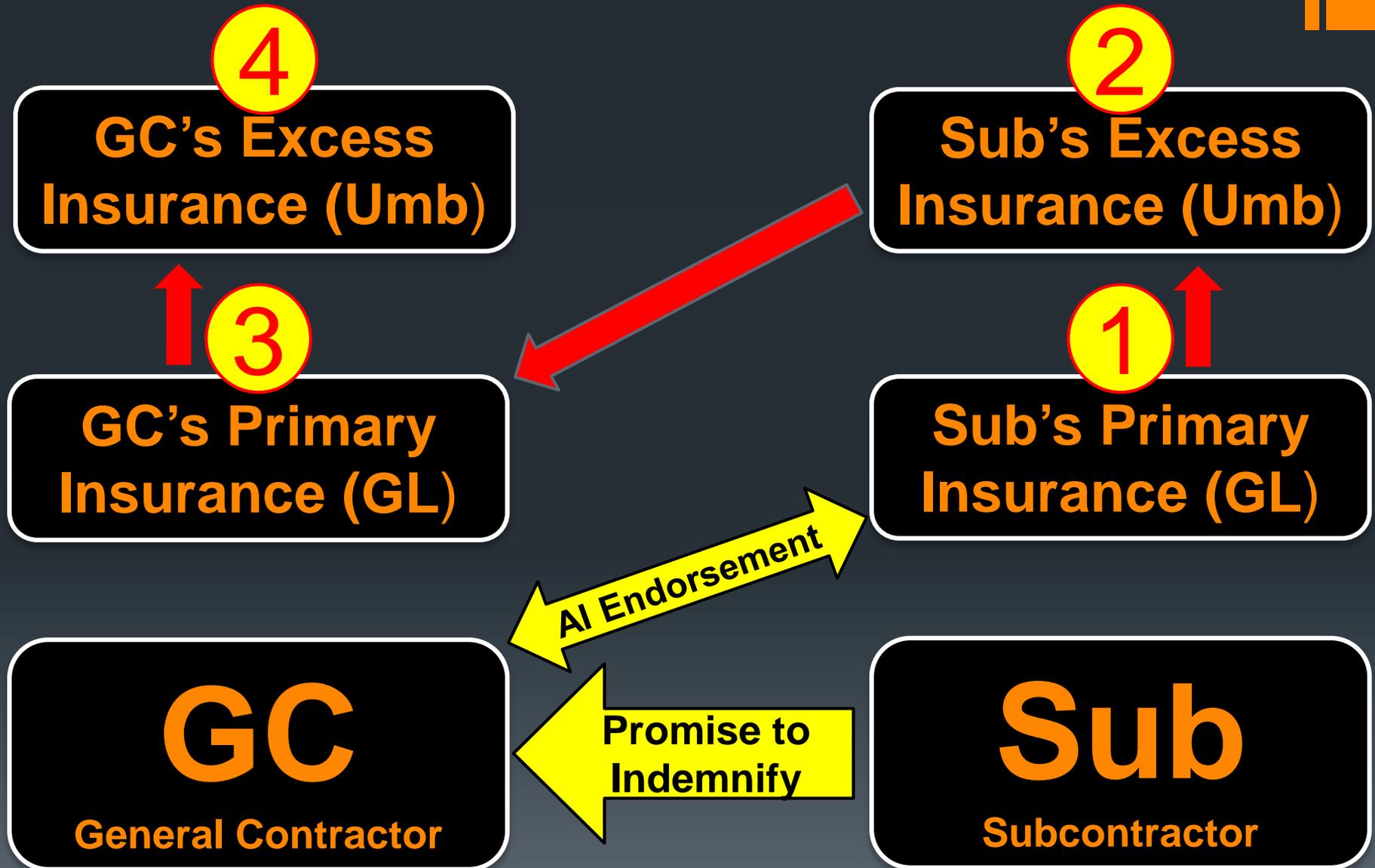
Other Insurance Condition



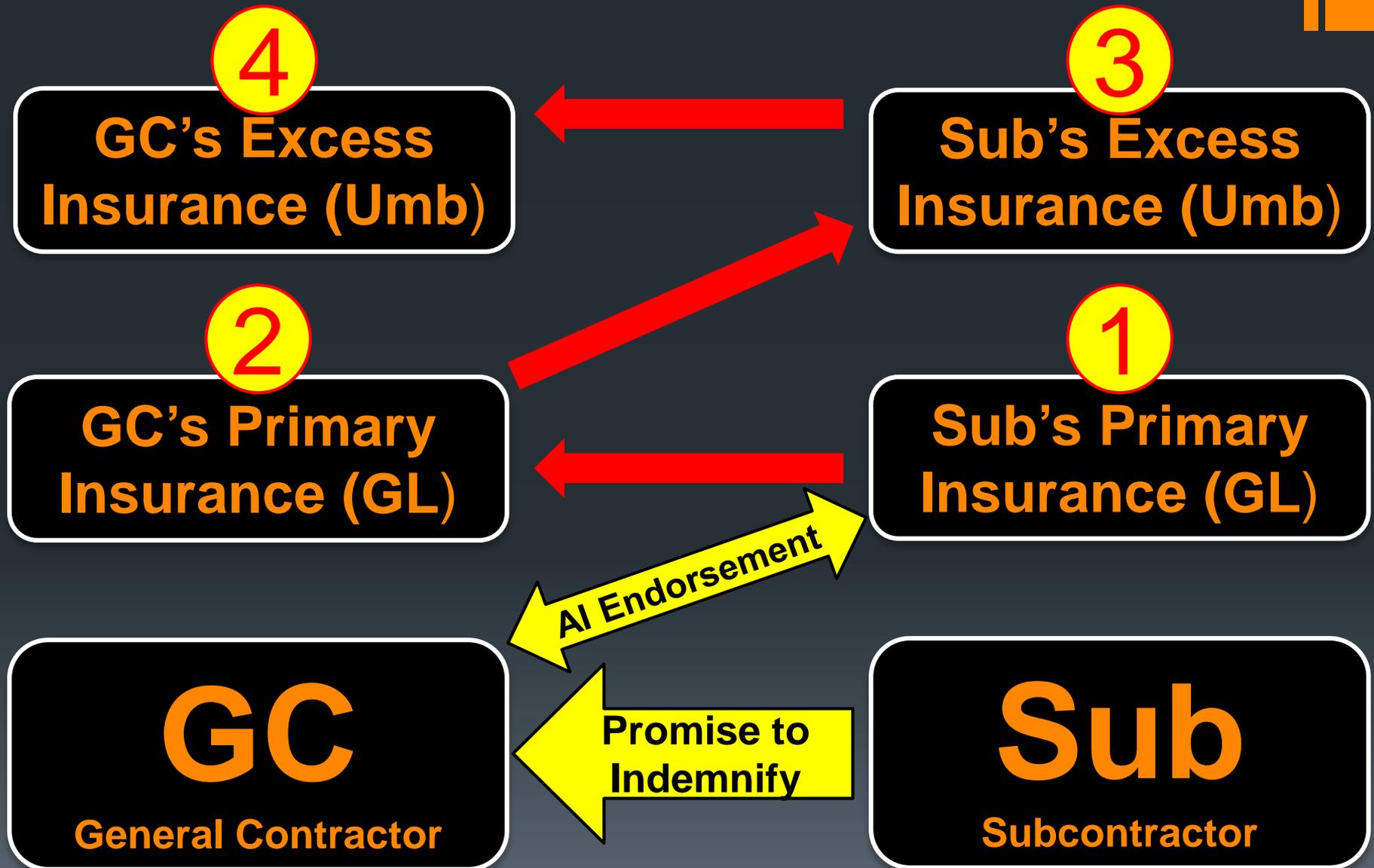
This insurance is excess over any other primary insurance available to you...

- If insured is AI on another policy, it is considered “other insurance”
- Eliminates defense, unless no other insurer defends
- Insurer is entitled to all rights of recovery

Vertical Exhaustion



Horizontal Exhaustion



Primary and Noncontributory



The following is added to the Other Insurance Condition and supersedes any provision to the contrary:

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

- (2) **You have agreed in writing** in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

Risk Transfer Checklist



- ✓ Hold Harmless
- ✓ Indemnification Agreement
- ✓ Insurers have acceptable AM Best rating
- ✓ AI on CGL, Umb & Auto
- ✓ AI on primary/noncontributory basis
- ✓ AI includes ongoing & completed operations
- ✓ WOS on GL, Umb, Auto & WC
- ✓ 30 Notice of Cancellation
- ✓ Acceptable COI and endorsements
- ✓ Confirm policy exclusions

COI CHECKLIST

Carriers AM Best rating acceptable	
Occur checked on GL, Umb	
Per Project Aggregate on GL	
AI checked on GL, Umb, Auto	
WOS checked on GL, Umb, Auto, WC	
Any Auto or Hired/Nonowned checked	
30 days NOC	

General Liability

\$1,000,000	Each Occurrence	
\$2,000,000	General Aggregate	
\$2,000,000	Products/Completed Ops Aggregate	
\$1,000,000	Personal & Advertising Injury	
	Ongoing Operations AI Endorsement	
	Completed Operation AI Endorsement	
	Per Project or Per Location Aggregate Endorsement	
	Waiver of Subrogation Endorsement	
	Primary & Noncontributory Endorsement	
	30 Day NOC Endorsement	

Workers' Compensation Statutory

Employers Liability		
\$1,000,000	Each Accident	
\$1,000,000	Disease - Each Employee	
\$1,000,000	Disease - Policy Limit	
	Waiver of Subrogation Endorsement	

Auto

\$1,000,000	Hired/Non-Owned or "Any Auto"	
\$1,000,000	Combined Single Limit	
	AI Endorsement	
	Waiver of Subrogation Endorsement	
	Primary & Noncontributory Endorsement	

Umbrella/Excess

\$5,000,000	Each Occurrence	
\$5,000,000	General Aggregate	
	AI Endorsement	
	Waiver of Subrogation Endorsement	
	Primary & Noncontributory Endorsement	



Construction Defect



Construction Defect

- 1995 – Montrose Decision – “continuous injury” trigger
- Montrose Exclusion, Super Montrose Exclusion
- 1999 – ISO releases “Known Loss Endorsement”
- Standard carriers exit residential market
- Excess & Surplus carriers become only option
- 2010 – HB 10-1394 – precludes “unknown” wording, defines “accident”

- HB 17-1169, SB 17-156, SB 17-045,
- Vallagio v Metropolitan Homes

Construction Defect?

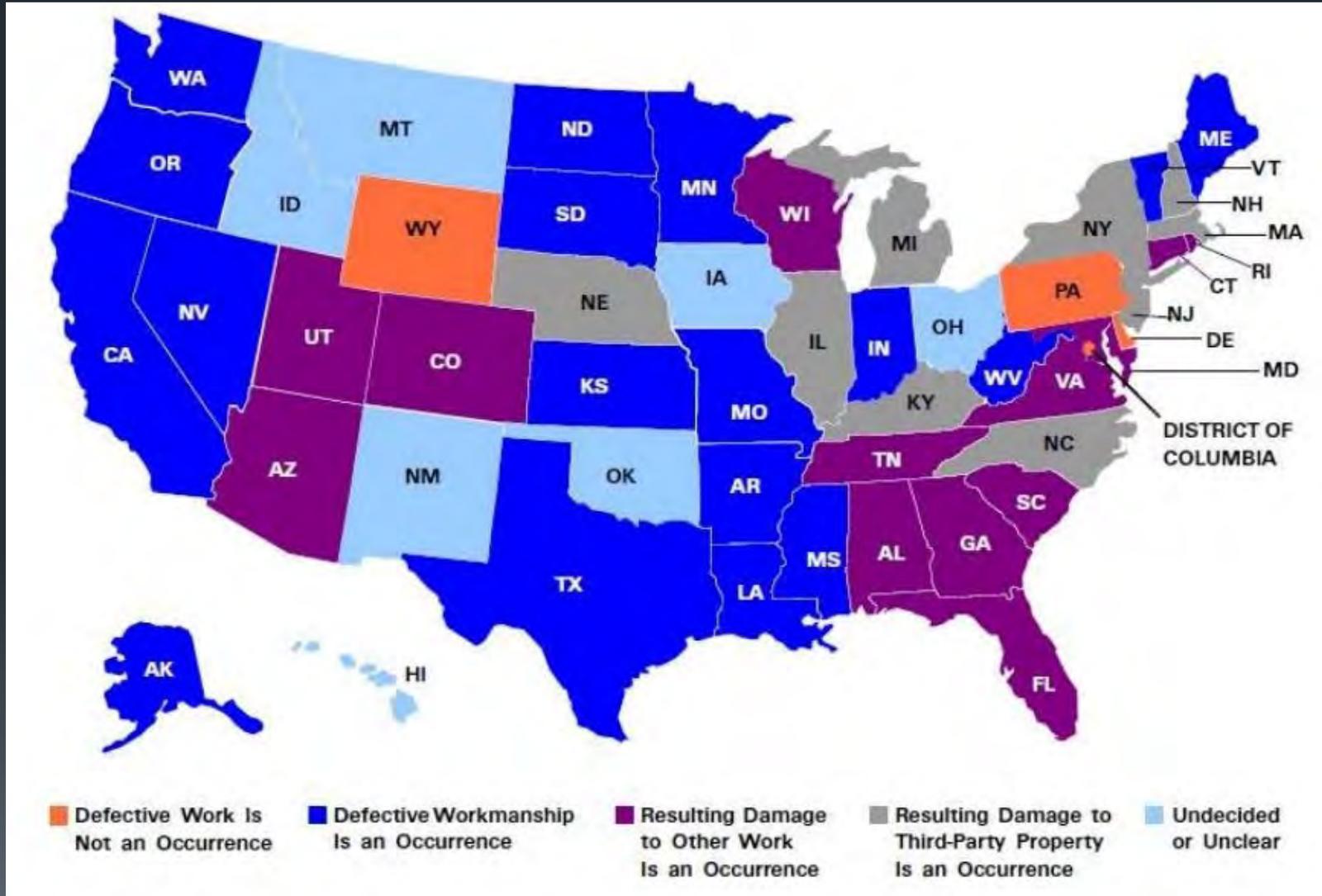


- Is There an Occurrence?
- Is There Property Damage?
- Coverage Trigger
- Allocation of Loss

Defective Work = Occurrence?

- 1) Defective construction is an occurrence
- 2) Resulting damage to other work is an occurrence
- 3) Resulting damage to third-party property is an occurrence
- 4) Defective work is not an occurrence

CD State Map



CD Triggers



- 1) **Manifestation Trigger** — Coverage provided by policies in force when PD is discovered.
- 2) **Exposure Trigger** — Policies in effect at time of actual exposure to the damage causing substance or event provide coverage.
- 3) **Injury-In-Fact Trigger** — Each policy in force when PD actually occurred provide coverage.
- 4) **Continuous Trigger** — All policies in force from initial PD to discovery provide coverage

CD - Allocation of Loss

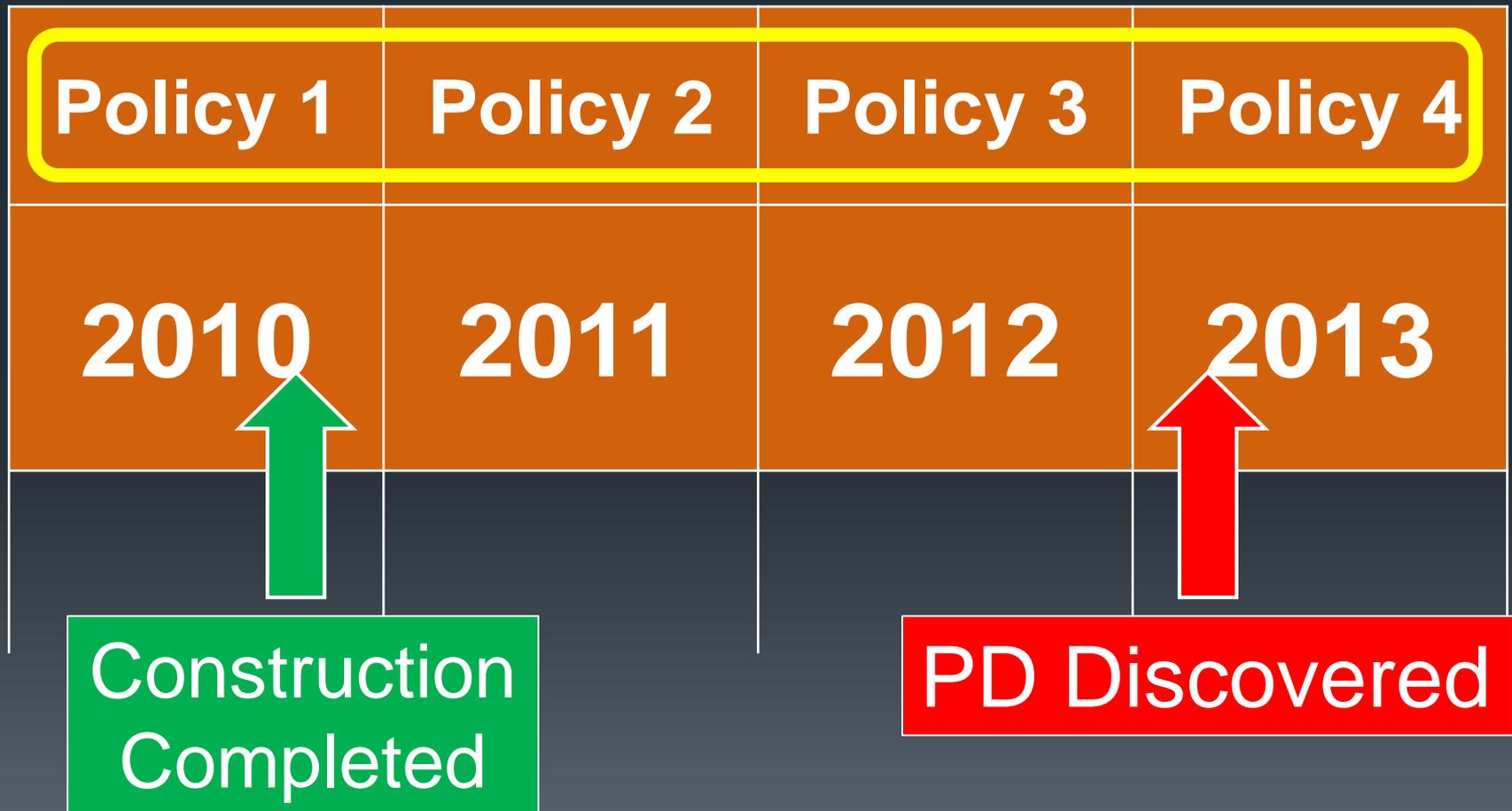
- Pro Rata – Each policy is responsible for a portion of damages based on the time each policy was in force
- All Sums – Policies in a specific policy period may respond in full, subject to their limits.

Montrose Chemical Corp. v Admiral Insurance Co., 913 P2d 878

- 1947 – 1982, Manufactured DDT
- 1960 - 1986, seven liability insurers
- 1982 – 1986, Admiral Insurance Company
- 1982 (prior to policy inception) – Montrose notified it could be a “potentially responsible party” (PRP) under state and federal actions arising from alleged pollution during manufacturing
- Admiral declines coverage citing known occurrence prior to inception date and loss-in-progress rule
- CA Supreme Court concludes “continuous trigger” should be adopted for continuous or progressively deteriorating losses.
- Although Montrose had been notified of the potential PRP, the court found that since Montrose was not sure it would be held legally liable, the element of contingency prevented knowledge from “loss-in-progress”

Construction Defect

CONTINUOUS INJURY TRIGGER



Montrose Exclusion

If insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, in whole or in part, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

CO H.B. 10-1394

- Property damage, including damage to the work itself or other work, is an “accident”
- Known vs Unknown
- Prevents carriers from excluding prior work “unknown” - Super Montrose
- Standard Montrose, “known”, still applicable

CDARA - Right to Repair



- Builder must be notified before action is filed
(75 days residential, 90 days commercial)
- Within 30 days claimant must provide builder access for inspection
- Builder may send claimant offer to settle or repair
(30 days residential, 45 days commercial)

Multifamily Construction



Construction



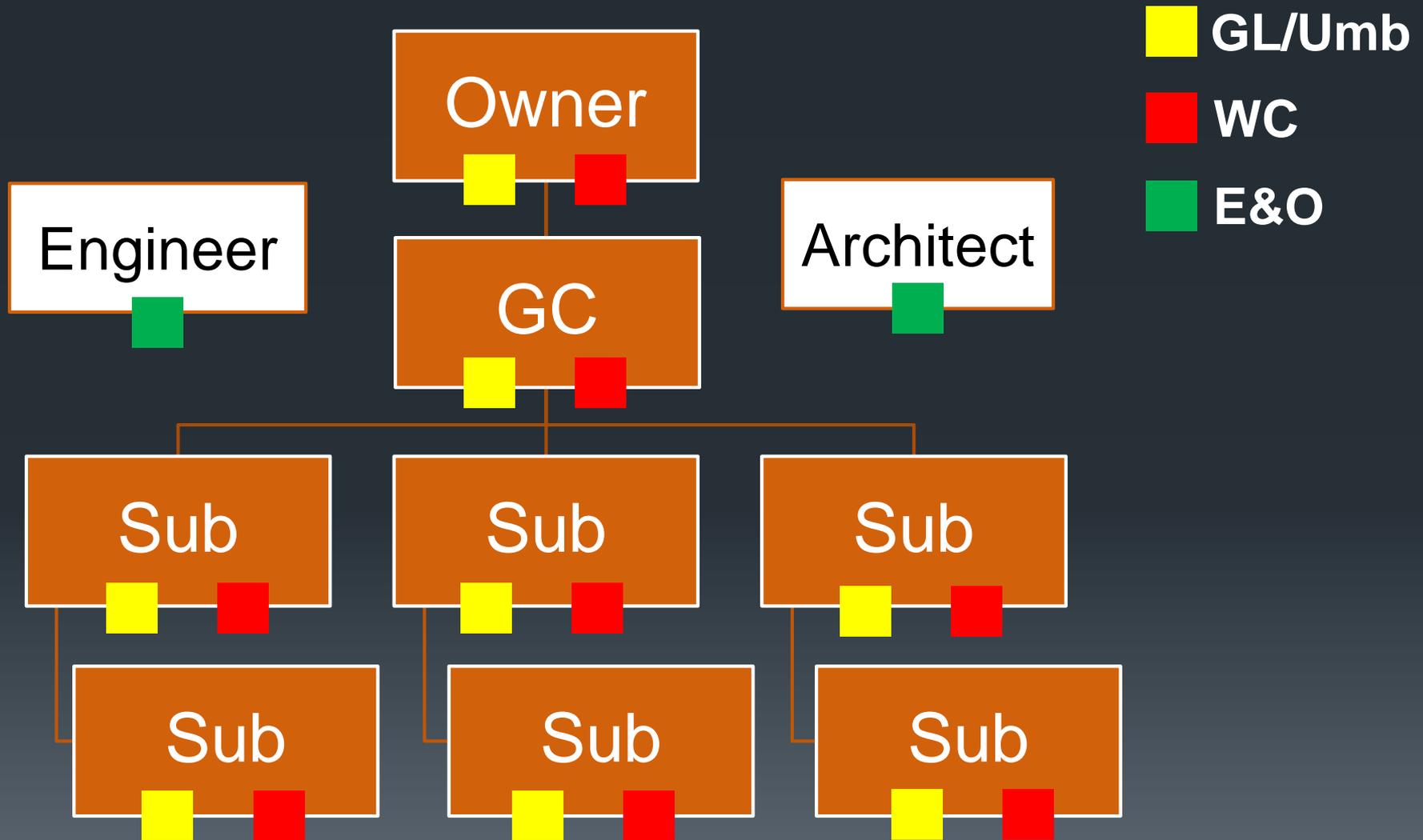
Construction



Practice Policies

- Traditional Insurance
- Covers all activities of insured
- Usually one year term
- Must be renewed
- Makes use of contract to shift responsibility for loss

Traditional Approach



Traditional Approach - Issues

- Coverage no longer in force
- Changes to terms at renewal
- Erosion of limits by other projects
- Increased litigation, multiple insurers
- Owner does not control

Wraps

OCIP

Owner Controlled
Insurance Program

ROCIP

Rolling Owner
Controlled Insurance
Program

CCIP

Contractor Controlled
Insurance Program

OPPI

Owner's Protective
Professional Indemnity
Coverage

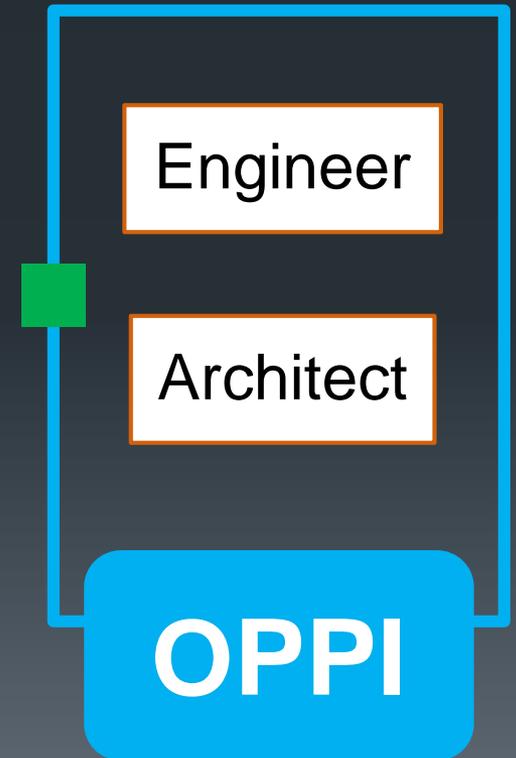
Wraps



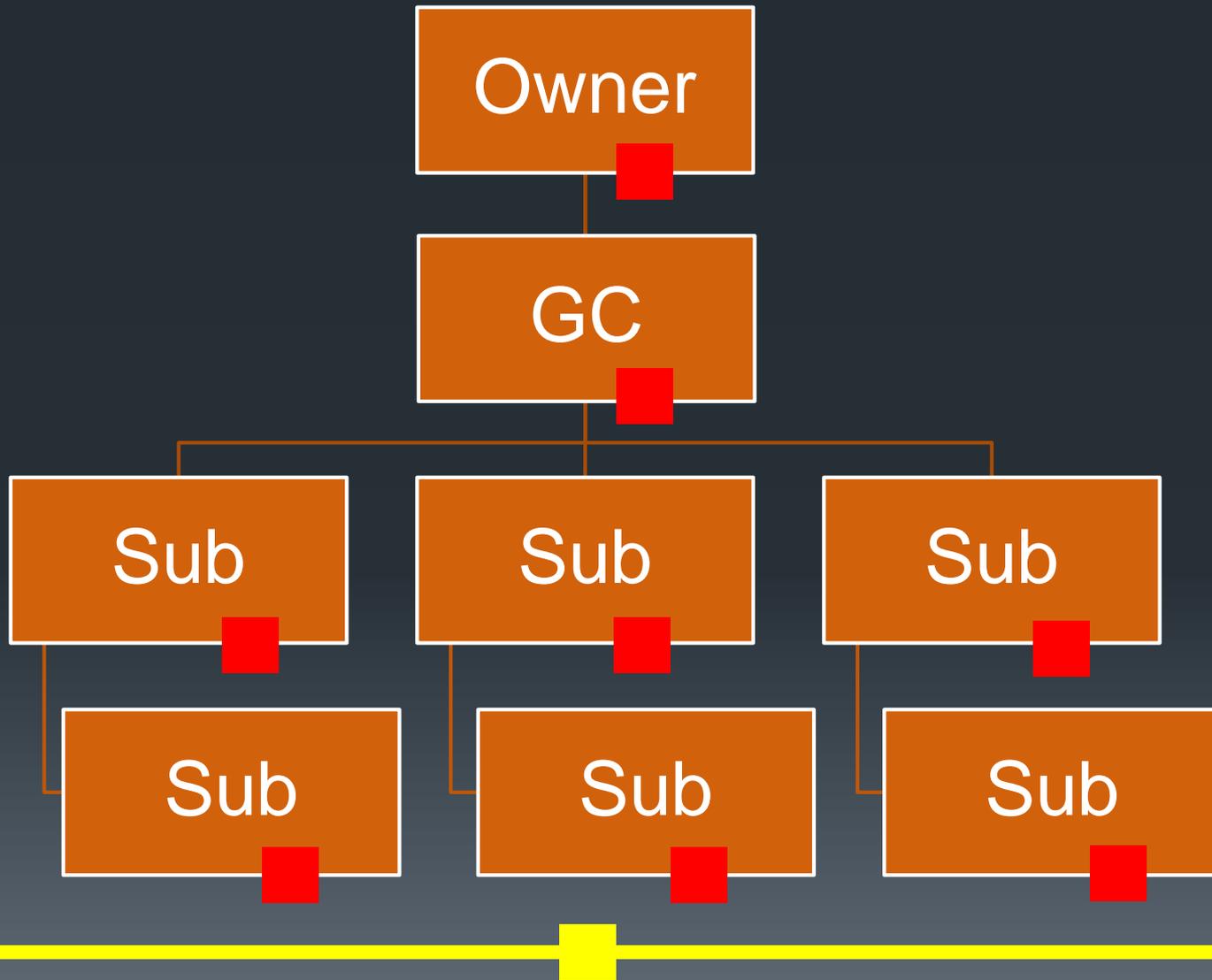
GL/Umb

WC

E&O



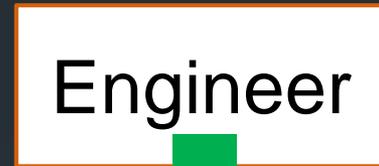
Typical CO Wrap



 GL/Umb

 WC

 E&O

 Engineer

 Architect

Wrap Pros



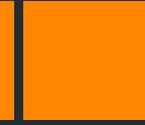
- Sponsor controls
- Dedicated limits
- Insurance cost reduced
- Project specific design
- Coverage for Statute of Repose
- Broader coverage
- Removal of “your work” exclusion

Wrap Cons



- Premium due at inception
- Policy extensions not guaranteed
- GC change not guaranteed
- May require third-party review
- Requires use of wrap administrator
- Subs must be enrolled
- Defense may be within policy limits

Completed Operations



Construction considered complete:

- 1) Substantial Completion
- 2) Certificate of Occupancy



Questions, Discussion

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