



# Construction Risk Partners

## Understanding Insurance for the Non-Insurance Person

November 11, 2022

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Frank Baxter - Director of Loss Prevention

[constructionriskpartners.com](https://www.constructionriskpartners.com)

# Agenda

1. Construction Risk Partners
2. Construction Insurance 101
2. How A Safety Professional Can Impact Insurance Costs
3. WC, GL, AL, Umbrella, PL, CPL
4. Occurrence vs. Claims Made
5. Additional Insured
6. Indemnification Agreement
7. Builders Risk
8. Certs
9. SDI/CCIP

# Who is Construction Risk Partners?

- CRP is a full-service construction risk consulting and brokerage firm.
- CRP specializes in identifying, evaluating, and managing construction risk for contractors, subcontractors, developers, and project owners.
- CRP specializes in the following for the Construction Industry:
  - Surety / Performance Security
  - Wrap Up (OCIP / CCIP)
  - Subcontractor Default Insurance (SDI)
  - Property / Builders' Risk Insurance
  - Captive Strategies
  - Practice Programs



# Who is Construction Risk Partners?

What CRP provides to our valued clients

- Benchmarking & Stewardship
- Claims Services Management
- Safety / Loss Prevention
- Risk Advisory



150+  
Valued  
Clients



\$350 M  
Annual  
Premium



85 Highly  
Skilled  
Employees





# History of Modern Insurance

- 1681 Joint Stock Insurance Company was founded after the great fire of London in 1666 where fire destroyed over 7,000 homes
- 1688- Lloyd's was founded by Edward Lloyd at his coffee house on London's Tower Street with roots in Marine Insurance
- 1752 First Insurance Company founded by Ben Franklin in Philadelphia call Philadelphia Contributionship

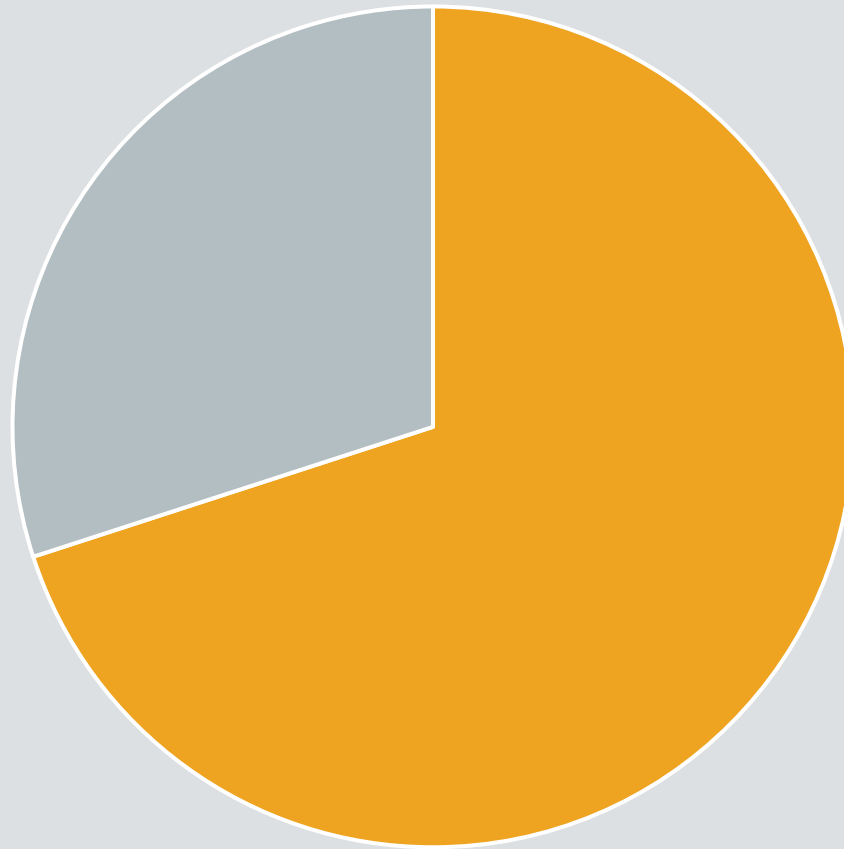






**The DNA of Capitalism**

# Losses Drive Costs



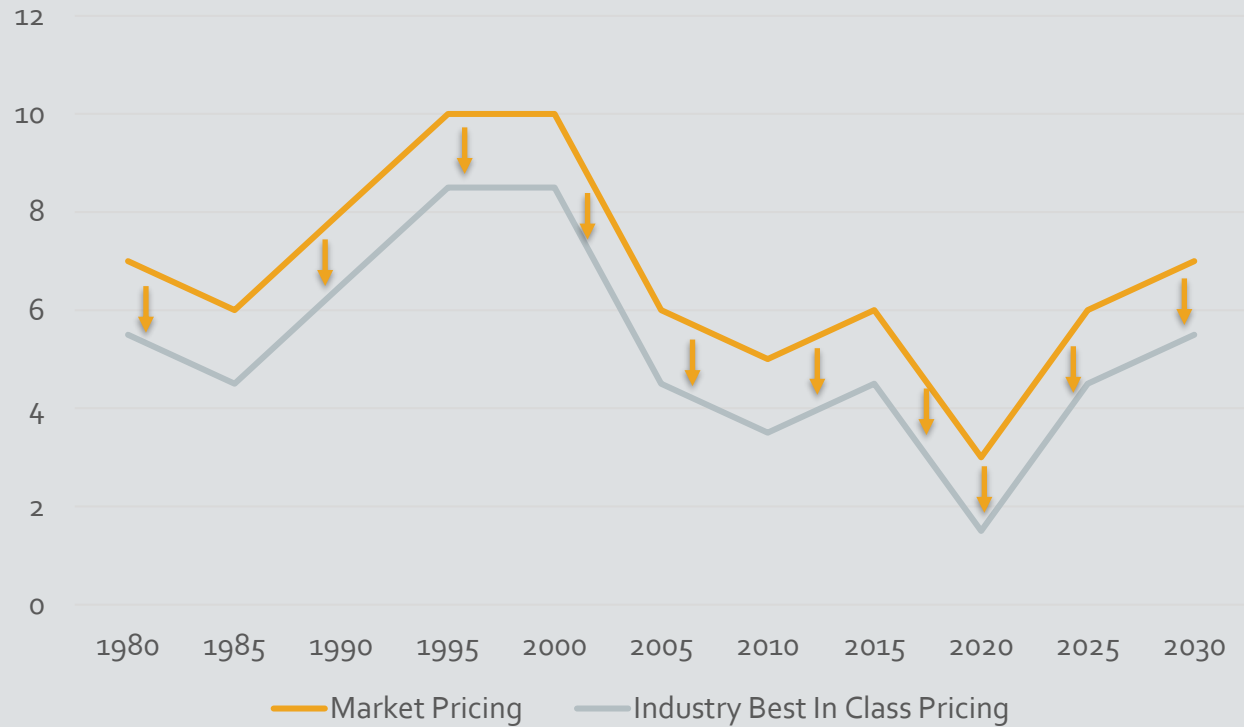
■ Losses ■ Fixed Costs



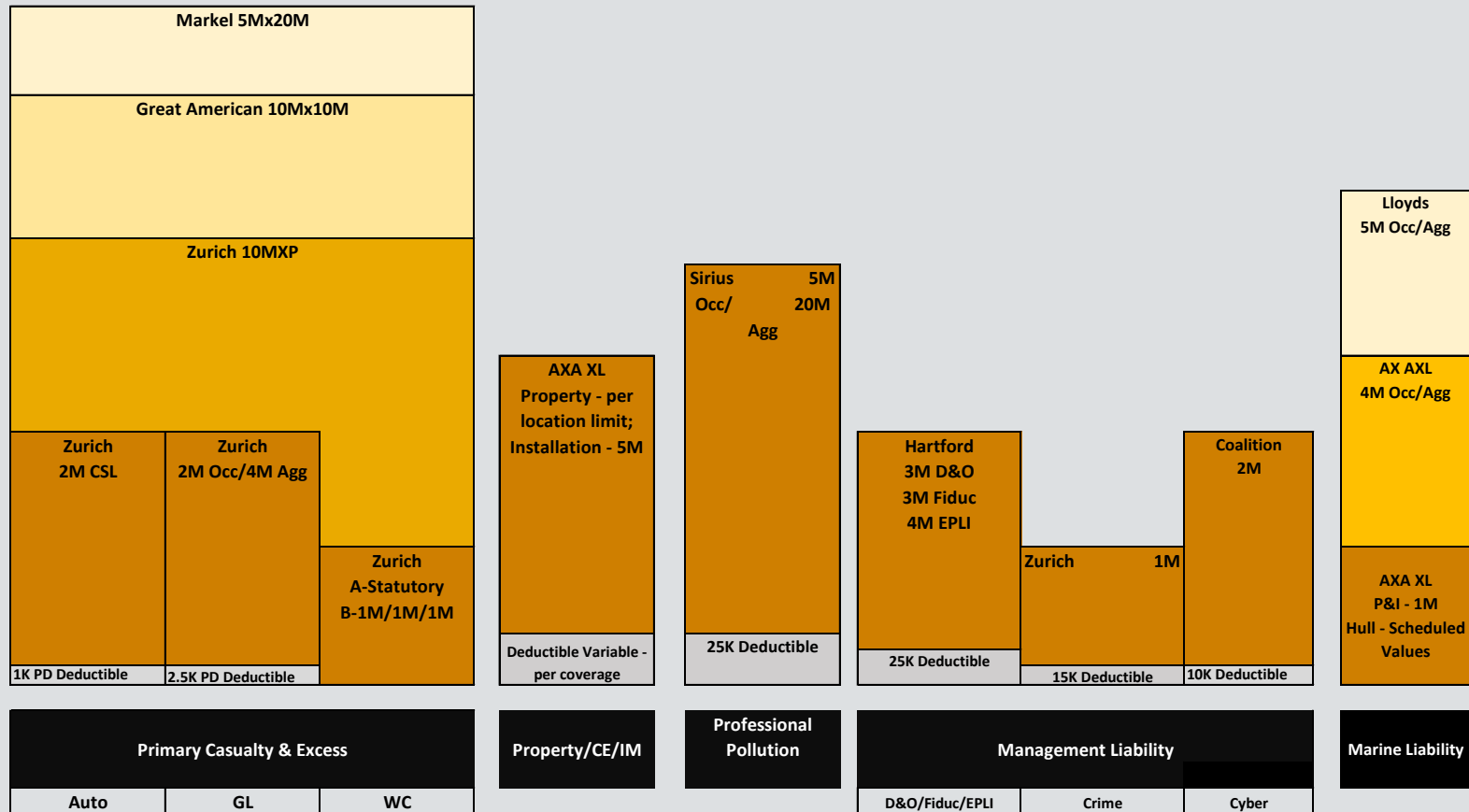


# Creating A Competitive Advantage

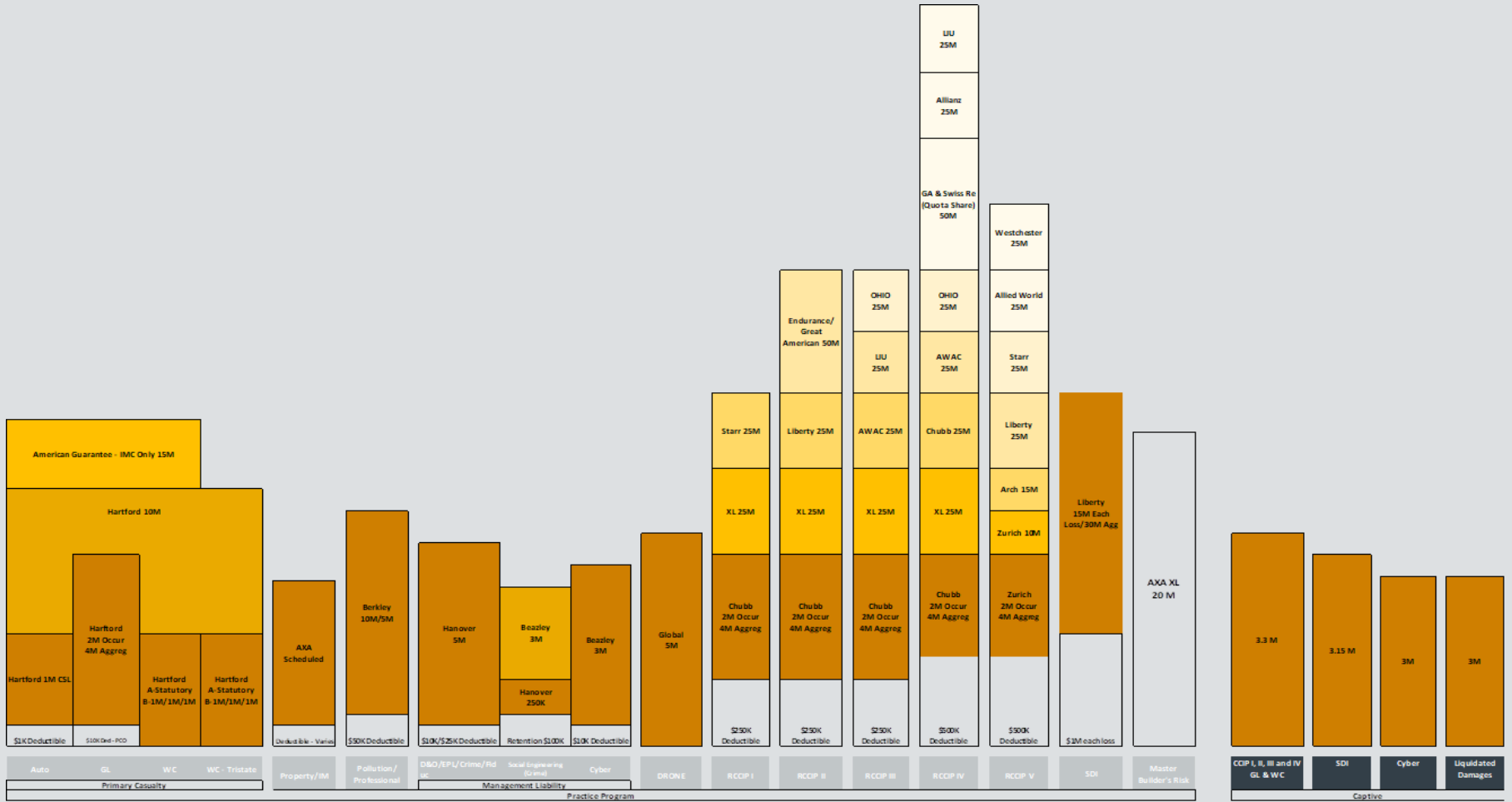
## Insurance Market Conditions



# Insurance Summary



# Insurance Summary



# First –Second-Third Party



# Workers Comp Vs OSHA

- A worker's comp case and an OSHA recordable case are not always the same.
- Example One- worker twist their ankle, sent to the Occ Client, giving an X-Ray and release to full duty with two aspirins and a bag of ice.
  - Insurance Compensable – YES - there will be a bill generated from the Occ Client, the worker's medical cost will be covered
  - OSHA Recordable – NO - the X-Ray was only for diagnostic purposes; worker was returned to full duty and the aspirins were not prescription strength



# Workers Compensation and Employers Liability

- Employee Related Job Injuries
- Compulsory/Statutory
- Varies By State
- Benefits
  - Medical (Unlimited)
  - Disability (% of Weekly Wages-66 2/3%)
  - Rehabilitation
  - Death
- Employers Liability-Claims Not Covered under WC



# Commercial General Liability (CGL) – Part 1

## Liability Loss Exposure Groups

- **Premises and Operations**
  - Exposures at and away from the insured's location
- **Products and Completed Operations**
  - Exposures arising out of insured's products or completed work
- **Contractual Liability**
  - Agreements to assume cost of another's liability
- **Independent Contractor Liability**
  - Direct and/or vicarious liability of others hired to perform work



# Commercial General Liability (CGL) – Part 2

## ➤ Legal Wrongs

- Criminal
- Tort (Civil Wrong)
- Breach of Contract

## ➤ Triggers

- Legal Liability
- Occurrence
- BI, PD, PI
- Separation of Insured's
- Waiver of Subrogation

## ➤ Exclusions

- Usually Covered by Another Party
- Underwriters Unwilling to Cover or Blanket
- Uninsurable

# Commercial General Liability (CGL) – Part 3

## ➤ Limits of Liability

- Each Occurrence
- General Aggregate
- Per Project/Per Location
- Aggregate-Products and Completed Operations
- Personal Injury
- Damage to Premise
- Medical Payments
- Defense Costs Outside Limit of Liability



# Business Auto Policy

- Owned, Hired, Non-Owned
- Symbols: 1, 2, 5, 6, 7, 8, 9
- No Fault
- Uninsured/Underinsured Motorist
- Limits – Per Accident
- Auto Liability
  - BI
  - PD
- Physical Damage
  - Comprehensive
  - Collision

# Building your wall of Defense



# Excess/Umbrella Liability

## ➤ Excess Liability Over Primary Liability Limits Found In

- General Liability
- Automobile Liability
- Employers Liability

## ➤ Not Standardized

## ➤ Follow Form Primary/Non-Contributory-Vertical Integration





# Professional Liability

- Design Work for Architects, Engineers, Testing and Inspection
- Per Claim/Aggregate
- “Reasonable Standard of Care” Doctrine
- Definition of “Professional Design Services” - **See handout**
- No Additional Insured Status Provided
- Claims Made Trigger (Not Occurrence)
- Defense Costs Inside Limit of Liability

# Pollution Liability

- Environmental Insurance
  - Third Party Liability (negligence) for Bodily Injury, Property damage, clean up costs, and defense costs that arise from the operations of the contractor
- Key requirements from subcontractor
  - Mold Coverage
  - Additional Insured status on primary and non-contributory basis
  - Transportation of waste material
  - Coverage at Non-owned Disposal sites for disposal of waste materials
  - Per jobsite dedicated limits

# Management Liability

- **D&O**
  - Wrongful Act
  - Not acting in good faith or best interests of company
  - Covered: D's & O's – Company
  - Why?
- **EPL**
  - Claims by employees for discrimination based on sex, race, age or disability, wrongful termination, harassment or other employment related issues
- **Crime**
  - Employee Dishonesty
  - Computer Fraud
  - Wire Fraud
- **Cyber**
  - Recover costs after Cyber-related security breach
    - Network Breach (Privacy)
    - Third Party Liability
    - First Party- BII/Data Destruction/ Cyber extortion

# Additional Insured Endorsement

- Typically Required by Contract
- Additional Insured Rights
  - File Claim Directly with Carrier
  - Defense Costs Outside the Limit of Liability
- Defines Scope of Coverage
  - Exposure not defined by Indemnity Agreement, as with Contractual Liability
- Differences | How Coverage should Apply to the Additional Insured(s)
- It should apply to
  - Vicarious Liability
  - Contributory Negligence
  - Sole Negligence
- Many Different ISO and Non-ISO AI Endorsements
- Primary and Non-Contributory

# Comparison of ISO Additional Insured Forms

| CG 20 10 11 85   | CG 20 10 10 01   | CG 20 37 10 01   | CG 20 10 07 04  | CG 20 37 07 04   |
|--|--|--|---|--|
| <ul style="list-style-type: none"> <li>➤ Ties Additional Insured status to liability arising out of "your work" - i.e., the named insured's work - for the additional insured.</li> <br/> <li>➤ Applying the coverage to "your work" encompasses liability incurred while the named insured's work is in progress and also the named insured's completed operations.</li> <br/> <li>➤ Addresses a coverage requirement that is frequently imposed by project owners on contractors doing work for them - the contractor will provide the owner with additional insured status for claims against the owner arising out of completed work.</li> <br/> <li>➤ Later versions of CG 20 10 were revised to take away completed operations coverage, but the 11/85 version continued to be used regularly until the last three years.</li> </ul> | <ul style="list-style-type: none"> <li>➤ Grants coverage only with respect to the named insured's ongoing operations (i.e., there is no coverage for completed operations).</li> <br/> <li>➤ Limits the term of additional insured coverage to the time period in which operations are actually being performed by the named insured. This language is a concern because coverage could potentially be eliminated if operations are still in progress but a claim arises against the additional insured after their operations are completed. ISO adopted the CG 20 37, which can be used in conjunction with CG 20 10 to fill this gap (see next column)</li> <br/> <li>➤ The endorsement also contains a design professional liability exclusion.</li> </ul> | <ul style="list-style-type: none"> <li>➤ Provides additional insured status with respect to the products-completed operations hazard in connection with the named insured's work.</li> <br/> <li>➤ Coverage applies only for completed operations claims, there is no coverage for premises and operations, which can be included by adding the CG 20 10 10 01.</li> <br/> <li>➤ By applying the CG 20 37 and the CG 290 10 (10 01) endorsements, ISO developed a way to essentially receive similar coverage to the CG 20 10 1185.</li> </ul> | <ul style="list-style-type: none"> <li>➤ Only applies to ongoing operations.</li> <br/> <li>➤ Only covers liability for BI, PD and Personal and Advertising Injury caused in whole or in part by:               <ul style="list-style-type: none"> <li>- Your acts or omission or the acts of omission of other acting on your behalf.</li> </ul> </li> <br/> <li>➤ Goal is to narrow the grant of coverage to the additional insured to liability arising out of the subcontractors' ongoing operations for the additional insured along with that of its subs. Sole negligence of the additional insured party is specifically not defended under the new wording.</li> </ul> | <ul style="list-style-type: none"> <li>➤ Only applies to completed operations.</li> <br/> <li>➤ No coverage for "personal injury or advertising liability".</li> <br/> <li>➤ Only applies to liability arising out of acts or omissions of the named insured or others acting on its behalf.</li> <br/> <li>➤ Needs to be used in conjunction with CG 20 10 07/04 to meet contract requirements for additional insured status for both ongoing and completed operations. Again, endorsement is trying to narrow scope of coverage to the additional insured to just address vicarious liability of the general and joint negligence (which is imputed by the phrase "in whole or in part" from the subcontractors' operations).</li> </ul> |

# Indemnification Agreement

## ➤ Construction Contract

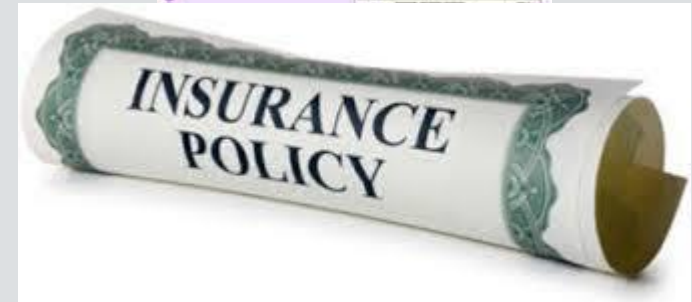
## ➤ Type

- Limited (own negligence-preference for GC with owners)
- Intermediate (Contributory- "In Whole or In Part")
- Broad-Any Liability, including Sole Negligence
  - Not Allowed in Most States-Against Public Policy

## ➤ Sample – Handout




# The power of Contracts and COI



# Sample Liability Certificate of Insurance

## (Acord 25 – Certificate of Liability Insurance)



### CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

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 have ADDITIONAL INSURED provisions or 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).

| <b>PRODUCER</b><br><input style="width: 100%; height: 40px;" type="text"/> | <b>CONTACT</b><br><small>NAME:</small> <input style="width: 100%; height: 15px;" type="text"/><br><small>PHONE (A/C, H/L, EXT.):</small> <input style="width: 100%; height: 15px;" type="text"/> <small>FAX (A/C, H/L):</small> <input style="width: 100%; height: 15px;" type="text"/><br><small>E-MAIL ADDRESS:</small> <input style="width: 100%; height: 15px;" type="text"/><br><hr/> <table style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 80%; text-align: left; font-size: 7px;">INSURER(S) AFFORDING COVERAGE</th> <th style="width: 20%; text-align: left; font-size: 7px;">NAIC #</th> </tr> <tr> <td>INSURER A: <input style="width: 95%; height: 15px;" type="text"/></td> <td><input style="width: 5%; height: 15px;" type="text"/></td> </tr> <tr> <td>INSURER B: <input style="width: 95%; height: 15px;" type="text"/></td> <td><input style="width: 5%; height: 15px;" type="text"/></td> </tr> <tr> <td>INSURER C: <input style="width: 95%; height: 15px;" type="text"/></td> <td><input style="width: 5%; height: 15px;" type="text"/></td> </tr> <tr> <td>INSURER D: <input style="width: 95%; height: 15px;" type="text"/></td> <td><input style="width: 5%; height: 15px;" type="text"/></td> </tr> <tr> <td>INSURER E: <input style="width: 95%; height: 15px;" type="text"/></td> <td><input style="width: 5%; height: 15px;" type="text"/></td> </tr> <tr> <td>INSURER F: <input style="width: 95%; height: 15px;" type="text"/></td> <td><input style="width: 5%; height: 15px;" type="text"/></td> </tr> </table> | INSURER(S) AFFORDING COVERAGE | NAIC # | INSURER A: <input style="width: 95%; height: 15px;" type="text"/> | <input style="width: 5%; height: 15px;" type="text"/> | INSURER B: <input style="width: 95%; height: 15px;" type="text"/> | <input style="width: 5%; height: 15px;" type="text"/> | INSURER C: <input style="width: 95%; height: 15px;" type="text"/> | <input style="width: 5%; height: 15px;" type="text"/> | INSURER D: <input style="width: 95%; height: 15px;" type="text"/> | <input style="width: 5%; height: 15px;" type="text"/> | INSURER E: <input style="width: 95%; height: 15px;" type="text"/> | <input style="width: 5%; height: 15px;" type="text"/> | INSURER F: <input style="width: 95%; height: 15px;" type="text"/> | <input style="width: 5%; height: 15px;" type="text"/> |
|--|---|-------------------------------|--------|---|---|---|---|---|---|---|---|---|---|---|---|
| INSURER(S) AFFORDING COVERAGE  | NAIC #  |                               |        |   |   |   |   |   |   |   |   |   |   |   |   |
| INSURER A: <input style="width: 95%; height: 15px;" type="text"/>          | <input style="width: 5%; height: 15px;" type="text"/>   |                               |        |   |   |   |   |   |   |   |   |   |   |   |   |
| INSURER B: <input style="width: 95%; height: 15px;" type="text"/>          | <input style="width: 5%; height: 15px;" type="text"/>   |                               |        |   |   |   |   |   |   |   |   |   |   |   |   |
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| INSURER F: <input style="width: 95%; height: 15px;" type="text"/>          | <input style="width: 5%; height: 15px;" type="text"/>   |                               |        |   |   |   |   |   |   |   |   |   |   |   |   |

**COVERAGES**

**CERTIFICATE NUMBER:**

**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.

| ROW NUMBER | TYPE OF INSURANCE   | SUBJECT  | POLICY NUMBER | POLICY EFF. DATE (MM/DD/YYYY) | POLICY EXP. DATE (MM/DD/YYYY) | LIMITS  |
|------------|---|--|---------------|-------------------------------|-------------------------------|---|
|            | <b>COMMERCIAL GENERAL LIABILITY</b>   |  |               |                               |                               |   |
|            | <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR                         |  |               |                               |                               | EACH OCCURRENCE \$                            |
|            |   |  |               |                               |                               | TERRACE TO RENTED PREMISES (EA OCCURRENCE) \$ |
|            |   |  |               |                               |                               | MED EXP (Any one person) \$                   |
|            |   |  |               |                               |                               | PERSONAL & ADV INJURY \$                      |
|            |   |  |               |                               |                               | GENERAL AGGREGATE \$                          |
|            |   |  |               |                               |                               | PRODUCTS - COMP/OP AGG \$                     |
|            | <small>GEN'L AGGREGATE LIMIT APPLIES PER:</small>   |  |               |                               |                               |   |
|            | <input type="checkbox"/> POLICY <input type="checkbox"/> PROJ. <input type="checkbox"/> LOC |  |               |                               |                               |   |
|            | <input type="checkbox"/> OTHER  |  |               |                               |                               |   |
|            | <b>AUTOMOBILE LIABILITY</b>   |  |               |                               |                               |   |
|            | <input type="checkbox"/> ANY AUTO   |  |               |                               |                               | COMBINED SINGLE LIMIT (EA ACCIDENT) \$        |
|            | <input type="checkbox"/> OWNED  | <input type="checkbox"/> SCHEDULED   |               |                               |                               | SODALY INJURY (Per person) \$                 |
|            | <input type="checkbox"/> AUTOS ONLY   | <input type="checkbox"/> AUTOS   |               |                               |                               | SODLY INJURY (Per accident) \$                |
|            | <input type="checkbox"/> HIRED  | <input type="checkbox"/> NON-OWNED   |               |                               |                               | PROPERTY DAMAGE (Per accident) \$             |
|            | <input type="checkbox"/> AUTOS ONLY   | <input type="checkbox"/> AUTOS ONLY  |               |                               |                               |   |
|            | <b>UMBRELLA LIAB</b>  | <input type="checkbox"/> OCCUR   |               |                               |                               | EACH OCCURRENCE \$                            |
|            | <b>EXCESS LIAB</b>  | <input type="checkbox"/> CLAIMS-MADE   |               |                               |                               | AGGREGATE \$                                  |
|            | <input type="checkbox"/> DEF. <input type="checkbox"/> RETENTION S.                         |  |               |                               |                               |   |
|            | <b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b>  |  |               |                               |                               | DEB. BENEFIT \$                               |
|            | <small>AND/OR DOES CONTRACTOR/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NY)</small>  | <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> N/A |               |                               |                               | OTH. BENEFIT \$                               |
|            | <small>If yes, describe under DESCRIPTION OF OPERATIONS below</small>                       |  |               |                               |                               | E.L. EACH ACCIDENT \$                         |
|            |   |  |               |                               |                               | E.L. DISEASE - EA EMPLOYEE \$                 |
|            |   |  |               |                               |                               | E.L. DISEASE - POLICY LIMIT \$                |

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

|  |   |
|--|---|
| <b>CERTIFICATE HOLDER</b><br><input style="width: 100%; height: 40px;" type="text"/> | <b>CANCELLATION</b><br>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.<br><br>AUTHORIZED REPRESENTATIVE<br><input style="width: 100%; height: 20px;" type="text"/> |
|--|---|

ACORD 25 (2016/03)

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# Builders Risk (Part 1)

- **Definition: Direct Physical Loss or Damage to Covered Property from a Covered Peril during the course of Construction, Erection, or Fabrication**
- **Can include Loss of Income and Extra Expense**
- **Coverage is Temporary and Ends Once the Construction is Considered Completed**
- **All Parties are insured's under the contract, including Owner, GC, and Subcontractor and All Tiers (Property Wrap Up)**
- **AIA contracts usually Require Owner to Purchase (Contractor Beware!)**



# Builders Risk (Part 2)

## Key Issues

- Owners Buys Policy (need to get copy)
- BR vs Standard Property Policy (Not Equivalent as Required in Construction Contract)
- Additional Insured (BR) vs Additional Interest (Property Policy) status
- All Risk or Special Cause of Loss Coverage-What Does It Mean?
- Flood, Earthquake, Windstorm, Off-Site Storage, Transit, Rigging
- Loss of Use Insurance (BI and Soft Costs-Delay in Startup)
- Testing (B&M)-Mechanical Breakdown Exclusion
- Waiver of Subrogation
- Replacement Cost equal to Full Value of Hard Construction Costs (No Co-Insurance)
- Occupancy Clause
- Key Exclusions
  - Flood, Quake- Buy Back
  - Design Errors (Ensuing Loss)
  - Faulty Workmanship (Ensuing Loss)
  - Testing (Mechanical Breakdown)-Buy Back
  - Pollution- Buy Back
- Review of Construction Contract (Section 11.3 Property Insurance) - Handout

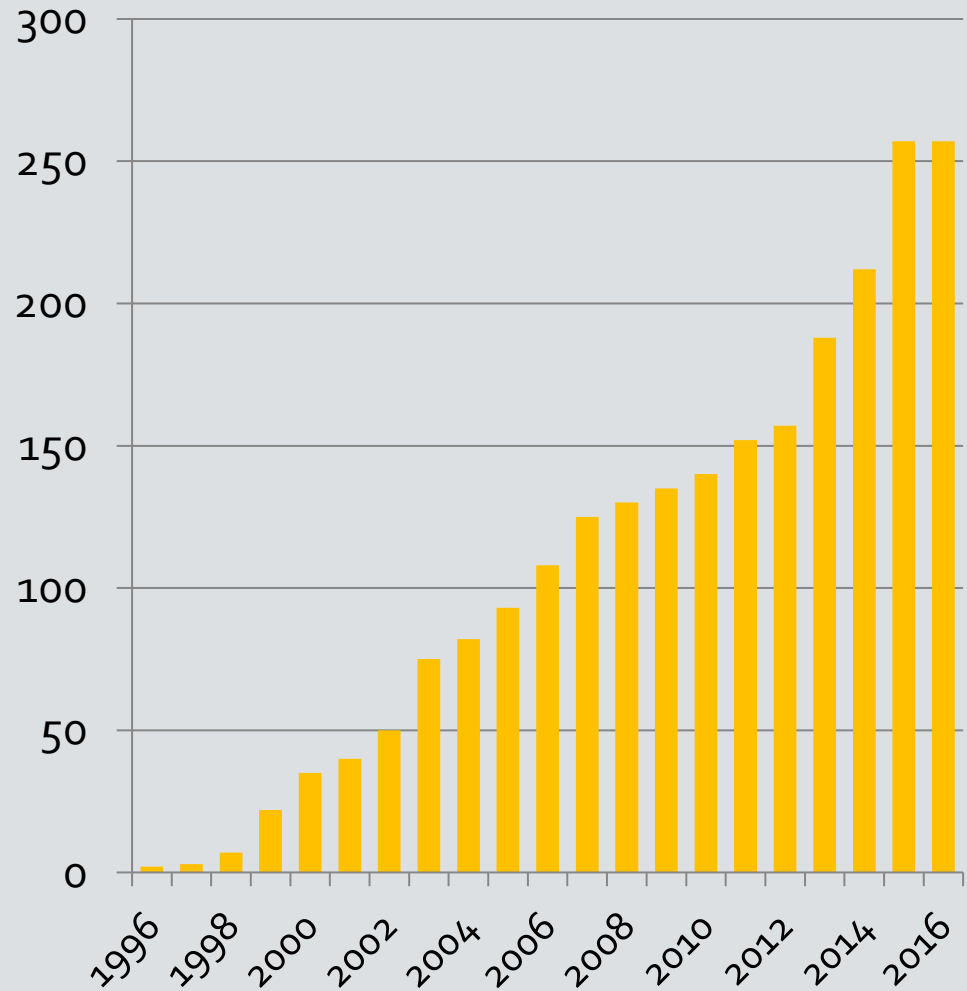
# What is SDI?

An insurance policy that indemnifies an Insured against the financial costs of a subcontractor default.

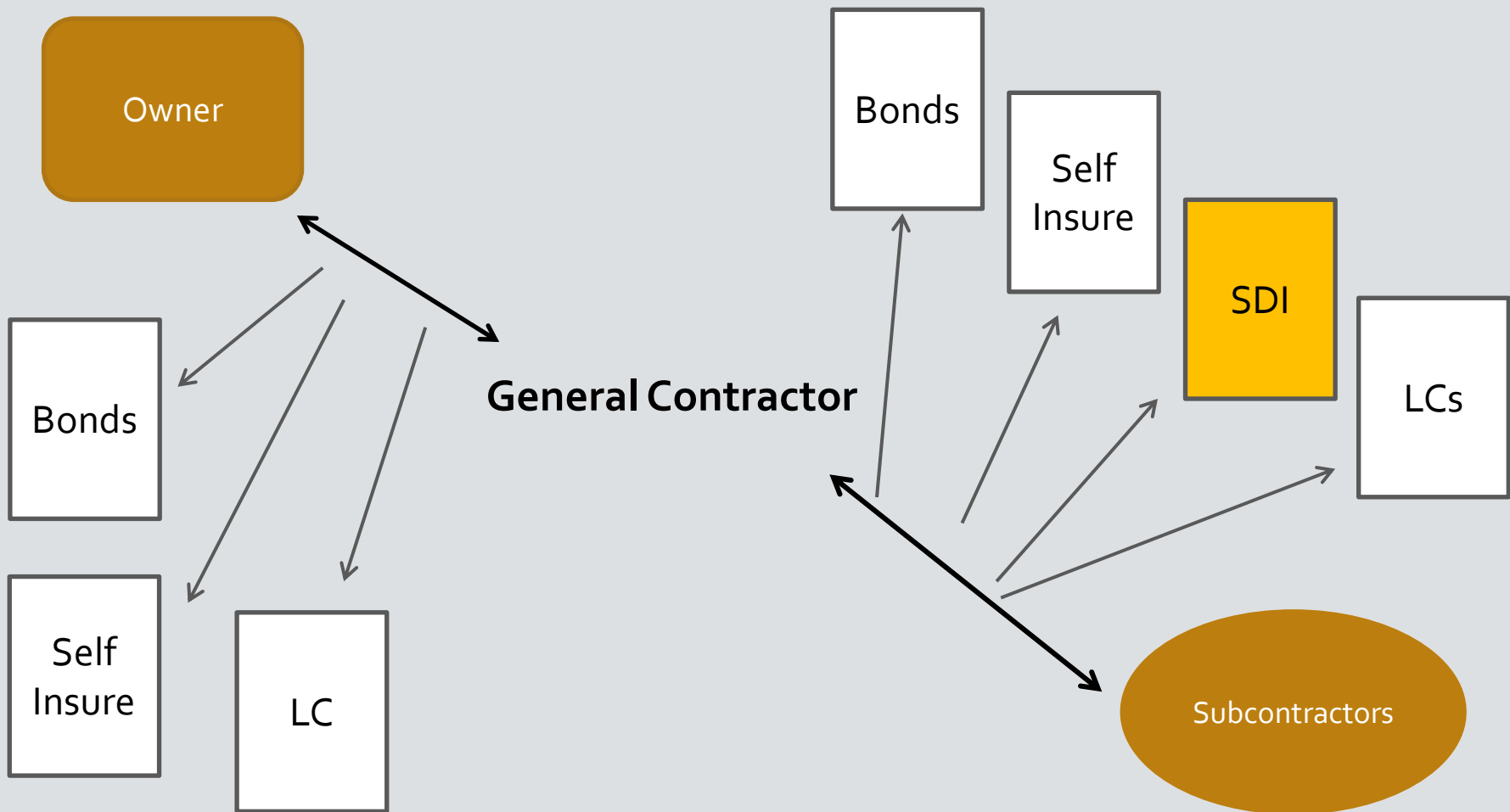


# SDI History

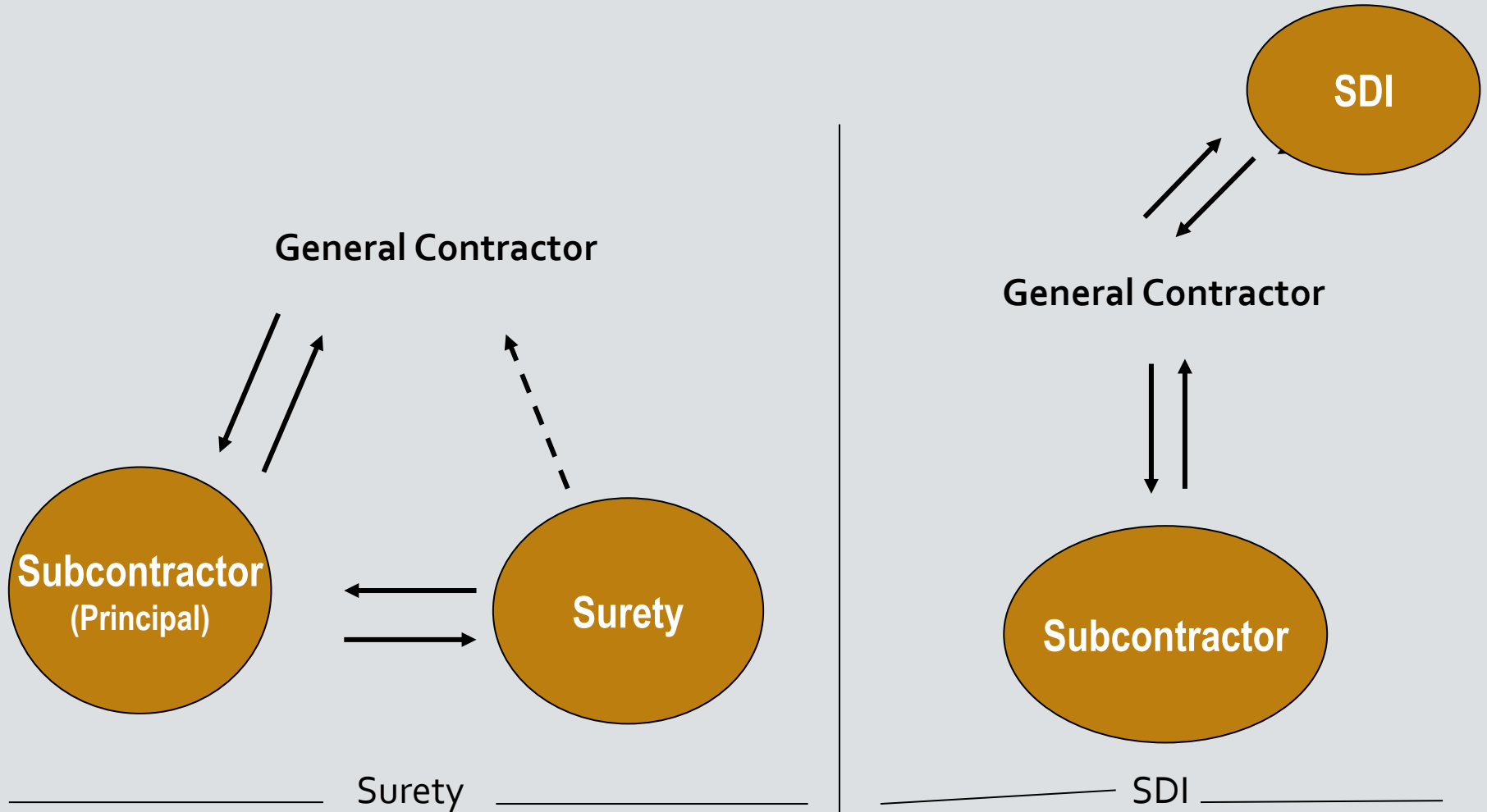
- Developed by Zurich in 1995
- Currently 250+ programs
- 4 Carriers offering coverage
  - Zurich
  - XL
  - Arch
  - Cove Programs
- \$65 Billion covered in 2016
- Coverage throughout the United States, Canada, United Kingdom and Germany
- 150 of the top 400 ENR



# Managing Performance Risk



# SDI vs. Surety – Contractual Relationship





# Wrap-Up Programs



# Wrap Up Programs

- One Line – General Liability
- Two Line – General Liability and Worker's Compensation



# Thank You



**Joe Kent**

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