



**2016 CLM Annual Conference  
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## **COMPLEX BUILDER'S RISK CLAIMS**

### **HYPOTHETICAL**

Insurer ABC issued a builder's risk policy to Big D for the construction of a 20-story condominium project in NYC.

Early on in the project, there were issues with certain parts of the foundation. In particular, part of the earth retention system (steel sheet piling driven into the soil to prevent movement of the soil during excavation) rotated out of plumb and moved significantly. The earth retention system was replaced, but the project was halted for 2 months during the repair period.

Big D also claimed that the delay in the project was well beyond the 2 months. Big D claimed that the shut down caused a ripple effect, which delayed the overall completion of the project by 10 months.

In addition to the cost to replace the earth retention system, Big D sought to recover millions of dollars for the following:

- Extended general conditions
- Management hourly fees and expenses
- General contractor overhead and profit
- Concrete subcontractors delay impact costs
- Loss of productivity costs
- Costs to attempt to accelerate the schedule
- Idle storage and equipment costs
- Increases in storage and labor costs
- Lost profits relating to the sale of the units

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○ The policy provided that the insured could recover for the lesser of the cost to replace the damaged property or restore it to the condition it was immediately before the

loss. The policy also provided for: (a) expediting and additional costs of construction materials and labor, with a limit of \$100,000; (b) expenses to reduce the amount of loss; and (c) soft costs and rental value due to the delay to the overall completion of the project schedule caused by the covered loss.

The types of soft costs recoverable were (1) interest on money borrowed to finance construction; (2) advertising expenses, (3) realty taxes and other assessments; and (4) costs resulting from the renegotiation of your leases or construction loans.

The policy contained an earth movement exclusion. The policy contained a design defect exclusion, with an ensuing loss provision. The policy contained an exclusion for loss caused by or resulting from delay.