



## POLICYHOLDER INSURANCE COVERAGE E-UPDATE

### GOLDBERG & CONNOLLY PROTECTS POLICYHOLDER RIGHTS IN CONSTRUCTION INSURANCE CLAIMS

JUNE 2011

Goldberg & Connolly's unique Policyholder Coverage Group represents policyholders in fully protecting their rights under their insurance policies.

In the risk-burdened construction industry, this frequently involves third party liability, personal injury and wrongful death claims, as well as first party property damage claims for fire, flood, builders' risk, business interruption and project delays.

G&C's insurance team's detailed knowledge of construction issues, such as contract and delay claims, coupled with its experience with insurance coverage disputes, is proving invaluable in guiding clients through these delicate matters which often involve millions of dollars in claims. Below are some examples of how we've helped our clients.

#### **DEFENDING A POLICYHOLDER CLAIM FOR DELAYED PAYMENT**

Goldberg & Connolly recently worked with a contractor who was denied payment when a large construction project suffered significant delays. The owner and its construction manager stopped all progress payments and denied the contractor's claim for delay damages. The owner's OCIP (Owner Controller Insurance Program) included Builders' Risk coverage that provided recovery for certain types of delays. The owner and construction manager did not want to allow the contractor to pursue its delay claims because

the contractor was citing as reasons for the delays events and conditions that were specifically excluded from the insurance coverage. This placed the client in a very delicate situation – it could not acquiesce to the owner's version of the events as that would acknowledge that the client was not entitled to recover the delay damages it was seeking, but it also could not be deemed to have provided false information in the pending insurance claim.

#### **COVERAGE DISPUTES CAN TRIGGER A PUBLIC OWNERS' "HOLDBACK" OF ALL CONTRACT FUNDS**

Goldberg & Connolly also recently worked with a general contractor whose progress payments totaling several millions of dollars were stopped by NYC when a personal injury action was commenced against the owner. The injured worker was an employee of a sub-subcontractor. The prime contract and all subcontracts required that the contractors and subcontractors provide insurance covering, as additional insureds, all "upstream" contractors and NYC, as owner.

By the time NYC notified the contractors of the lawsuit by the subcontractor's injured worker, so much time had elapsed that the client's (general contractor) insurance company denied coverage for late notice of the accident and the lawsuit. Goldberg & Connolly was able to work with the lower tier subcontractor's carrier to have the insurance company appoint defense counsel, with a reservation of rights (ROR), regarding eventual indemnity. The carrier agreed to defend the owner,



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ATTORNEYS AT LAW



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the general contractor and all higher tier subcontractors. NYC then re-started all the progress payments to the general contractor. Goldberg & Connolly's Policyholder Coverage Group was able to achieve this successful result in only a matter of several weeks.

#### OBTAINING SETTLEMENT CONTRIBUTION FROM THE INSURANCE COMPANY

One of the complexities of an insurance coverage dispute is that it often involves not one, but two lawsuits that must be pursued by the client. First, the client must defend the personal injury action by the injured worker or by the higher tier contractor that is seeking indemnification and insurance coverage for the personal injury action. Second, the client may need to sue its insurance company to obtain a declaration that the insurance company must provide coverage for the underlying lawsuit.

Goldberg & Connolly has been successful in obtaining contribution from the insurance companies for the settlement with the plaintiff in the underlying personal injury lawsuit, even when the coverage lawsuit against the insurance company has not been resolved. Obtaining the benefits from the disputed insurance policy - coverage for the loss alleged by the injured worker and, where possible, payment for the attorney's fees incurred in defending the personal injury action - is the fundamental goal.