



# Integrated

PROJECT DELIVERY  
SEMINAR SERIES

# 09

## MARSH



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# Integrated Project Delivery Risk and Insurance

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# What is Risk?



- Risk is the probability of an unfavorable outcome.
- **RISK** = (probability of an event occurring) X (impact of an event occurring)





# The Risk Management Process

- Establishing the context
- Identification
- Assessment
- Treatments
  - Avoidance (eliminate)
  - Reduction (mitigate)
  - Transfer (outsource or insure)
  - Retention (accept and budget)
- Create a risk management plan
- Implementation
- Review and evaluation of the plan



# Risk Management Under IPD



Under traditional delivery methods, risks are allocated to different parties and each party is responsible for its own risk management. Parties are more individually focused.

Under IPD, parties interests are aligned around what is best for the project and the project risks are shared among the members of the IPD team.





# Painshare & Gainshare Philosophy

- Who is in the circle?
- Tolerance for pain
- Quantifying the gain
- Risk Allocation
  - Pure Project Alliancing
  - Intermediate/Hybrid
  - Traditional





# Insurable vs. Uninsurable Risk

One characteristic of an insurable loss is the event that constitutes the trigger of a claim should be fortuitous, or at least **outside the control of the beneficiary** of the insurance. The loss should be “pure” in the sense that it results from an event for which there is **only the opportunity for cost**. Events that contain **speculative** elements, such as **ordinary business risks**, are generally **not considered insurable**.



# Insuring Risks from IPD

- Parties individual insurance policies may not be adaptable to risk sharing principles.
- Insuring a Special Purpose Entity can be problematic.
- Shared risks may be insurable for some IPD Team members and not for others.
- All liability policies are fault based. Contractually assumed risk absence of fault of an insured party is uninsurable.
- Waivers of consequential damage may not be acceptable to some project stakeholders.
- Waivers between contractually linked parties may be limited to a specific amount.
- Waivers of subrogation may not be acceptable to some property insurance underwriters.
- Liability to claims from third parties can not be waived.



# An IPD Team Controlled Insurance Program

- Not an OCIP and not a CCIP, but an IPDCIP.
- Select a risk consultant/broker early in process who understands the IPD risk sharing principles and can provide the services required for the development, implementation and administration of a successful Risk Management and Insurance program.
- In collaboration with a selected risk consultant/broker, create a project risk management plan.
- Engage underwriters early in the contract negotiation process to assess their willingness to adapt and/or create insurance products where needed to compliment the IPD Team's risk management objectives.



# An IPD Team Controlled Insurance Program

*(cont'd)*

- Engage underwriters prior to marketing the IPDCIP insurance program to showcase IPD Team collaborative culture, commitment to risk management, and program objectives.
- Follow a quality based underwriter selection process.
- Consider alternative loss sensitive risk/reward options.



# Risk/Reward Insurance Solutions

- **Workers Compensation**
  - No-fault mandatory coverage for work related injuries
  - Premiums are a significant overhead cost for contractors and subcontractors
  - Safety is a principle IPD goal
  - Favorable outcome can be achieved through effective loss prevention, control and mitigation treatments
  - Premium reduction can be achieved through use of a controlled program
  - Program may be structured to provide an appropriate level of shared risk and reward for project participants



# Risk/Reward Insurance Solutions

*(cont'd)*

- **General Liability/Excess Liability**
  - Covers third party bodily injury and property damage
  - Includes coverage for products and complete operations
  - Excludes claims from design and other professional services
  - Excludes most claims from the release of pollution, mold and other environmental exposures
  - Safety and quality are principle IPD goals
  - Favorable outcomes can be affected through loss prevention and control treatments
  - Controlled program enables risk sharing benefit from joint defense
  - Controlled program provides efficiencies in procurement of increased limits of liability
  - Program may be structured to provide shared risk and reward



# Risk/Reward Insurance Solutions

*(cont'd)*

- **Environmental**

- Covers third party bodily injury, property damage and clean up cost from creation or exacerbation of pollution conditions
- May be structured to include coverage for mold and MRSA
- Favorable outcomes can be achieved through effective implementation of loss prevention and control treatments
- Controlled program enables risk sharing benefit from joint defense
- Controlled program provides efficiencies in procurement of increased limits of liability
- Program may be structured to provide shared risk and reward



# Risk/Reward Insurance Solutions

*(cont'd)*

- **Property**
  - Builders Risk: First party coverage for loss or damage to insured property
  - Extensions may be available for consequential damages
  - May support use of waivers of subrogation against IPD team members
  - Favorable outcomes can be achieved through use of loss prevention and control treatments
  - Program may be structured to provide shared risk and reward



# Risk/Reward Insurance Solutions

*(cont'd)*

- **Surety/Subcontractor Default Insurance**
  - Protection from contractor or subcontractor default
  - Risk is elevated in poor economic times
  - Subcontractor default insurance may be available to contractor/construction manager
  - Surety bonds and default insurance are predicated on existence of a guaranteed maximum contract price (GMP)
  - Surety bonds do not support principles of IPD, as they apply solely to default of bonded contractor or subcontractor



# Professional Liability *Issues*

- Fading of “bright line” allocation of responsibility and risk to the design firm members of the team.
- Contractors/construction managers and subcontractors are exposed to more design liability
- Commercial general liability policies exclude claims for bodily injury and property damage arising out of the performance of professional services
- Professional liability policies provide broad claims made coverage for negligent acts, errors or omissions
- All policies have broad exclusions for contractual liability
- All policies exclude coverage for warrantees and guarantees



# Professional Liability *Issues* (cont'd)

- Claims are broadly defined and must be reported both promptly and within the policy period
- Some policies also require reporting of “circumstances,” knowledge of which is subjective
- Together, the project owner and construction team on a design project are responsible for 80% of all professional liability claims and 87% of the insurance company payments
- It is estimated that, on average, 35-40% of insurance company payments are for defense costs
- A majority of all claims are made with one year of project completion
- A high percentage of claims relate to project cost overrun and delay
- Traditional professional liability policies do not complement IPD risk sharing principles



# Professional Liability Insurance Alternatives

## A. A/E Practice Policies

- Purchased limits of liability are generally less than \$5,000,000
- Limits of Liability are aggregated with defense cost within the limit
- Policies do not support joint defense risk sharing for third party claims

## B. Contractor Professional Liability Practice Policies

- Professional service definition generally includes construction management
- Purchased limits are generally less than \$5,000,000
- Limits of liability are aggregated with defense cost within the limit
- Subcontractors with incidental design responsibilities may be uninsured
- Does not support joint defense risk sharing for third party claims



# Professional Liability Insurance Alternatives *(cont'd)*

## C. Project Specific Professional Liability

- All project participants performing covered professional services can be insured
- Limits of liability of up \$25 Million dedicated solely to project may be available
- Usual policy term to substantial project completion plus 5 years of extended reporting coverage
- Supports joint defense risk sharing alternatives for third party claims
- Excludes insured vs. insured claims
- Premiums represent a substantial additional cost



# Professional Liability Insurance Alternatives *(cont'd)*

## D. Owners Protective Professional Indemnity

- Owner purchased policy
- Indemnifies owner for damages resulting from Design Professionals' negligent act, error or omissions excess of that collected from available specified practice or project professional liability policies
- Limits of liability may be available in excess of \$25 million
- May be flexible so as to provide excess indemnity to an owner above a limitation of liability waiver to benefit of other project participants
- Fault based policy that is adversarial to IPD risk sharing principles but can provide catastrophic protection to project owner
- Additional premium costs are less than Project Specific Professional Liability



# A Model IPD Project Specific Professional Liability Policy

**Name Insured:** All project participants performing Professional Services

**Policy Term:** Substantial completion plus 5 years of extended reporting coverage

**Limit of Liability:** TBD

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**Coverage A:** Claims made by third parties who are not members of IPD Team or Named Insured under the policy alleging professional negligence.

**Deductible:** TBD

**Condition:** Joint Defense

**Coverage B:** Indemnification of IPD Team for damages resulting from Named Insureds' negligent design errors and omissions.

**Self Insured**

**Retention:** All project profit and risk sharing funds subject to a TBD project minimum amount.

**Conditions:**

1. Timely reporting to underwriters of changes in schedule or target costs.
2. Mutual agreement on an efficient binding dispute resolution process.



# KEY POINTS



- Integrated Project Delivery requires a new mindset from both project participants and their advisors.
- IPD Team should engage a risk consultant/insurance broker who understands the IPD principles early in process
- Project specific Insurance may be required to achieve IPD Risk sharing objectives
- Insurance industry is eager to develop new products but needs to be engaged during development of the IPD risk allocation process.
- An IPD Insurance program can be utilized to complement the IPD Risk/Reward objectives.



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