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CARE, CUSTODY & (LOSS) CONTROL

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When you drive by a construction site, it is awe-inspiring to witness the transformation of materials and equipment being brought in to create something with a whole new shape and meaning to the environment in which it is built. You can see the progression of anything from a new building, bridge, hotel, hospital, or sculpture add an artistic touch to a locale and celebrate achievements or moments in history, but what happens when some of those precious materials get damaged or destroyed before completion of the project? You may assume that insurance pays for it, but that's not always the case.

For the sake of simplicity, let's focus on the three groups of parties that are directly involved in the construction of a project: the project owner, the general and/or prime contractor, and usually a variety of subcontractors. All of these parties have the risk of their materials, goods, and/or specialty items being damaged or destroyed in transit to or during the course of construction. Of course, the responsibility for damage will be dictated by the contract between the parties. But when it comes to insurance, it is important to know how the care, custody, or control exclusion found in general liability policies restricts coverage and how to mitigate against it after materials have been received onsite.

Care, custody, or control exclusions are common in many liability insurance forms and effectively eliminate coverage for damage to property in the general contractor's possession. "In a general way the word "care" has

reference to *temporary charge*; "custody" implies a *keeping or guarding and a necessity for an accounting*, and "control" refers to power or authority to *manage, superintend, direct or oversee.*¹" Due to the high value of construction supplies, materials, and specialty items present during the construction process, it is vital that the parties are able to properly insure them. Failing to insure materials or equipment to be installed from physical damage can result in severe financial impact. From custom materials to air conditioning units, damage to these items can not only necessitate replacement, but potentially removal, re-installation, expedited shipping and delay costs, liquidated damages, and other expensive needs.

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Generally speaking, and regardless the mode of transportation, goods being shipped should be covered by some form of full value cargo insurance prior to arriving at their final destination. Once in your care, custody, or control, the items may be insured against physical loss by procuring a builder's risk policy, installation floater, or rigger's liability insurance. The scope of your work and specifics of your contract will help spell out the best method to insure.

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BUILDER'S RISK POLICIES

A builder's risk policy can be purchased on a project-specific or blanket basis. Blanket builder's risk policies provide coverage for all projects initiated during the policy period. These policies are designed to cover property during the course of construction and are usually provided on an all-risk basis, which only denies coverage for causes that are specifically excluded. Coverage can be offered for property while it is on the jobsite, stored at an off-site location, and being transported. This is the most preferred option for a construction project in order to cover the majority of the risk and protect items in your care, custody, or control.

INSTALLATION FLOATERS

An installation floater is, "An insurance policy that covers personal property installed, fabricated, or erected by a contractor. It covers the property until the installation work is accepted by the purchaser or when the insured's interest in the property installed ceases."² The key difference between installation floaters and builder's risk policies is that the latter are more comprehensive and used for new ground-up construction or sophisticated renovations, while installation floaters tend to limit coverage to specific perils and only cover the type of materials or equipment named in the policy. Because installation floaters are usually narrower in coverage, they are generally less expensive than builder's risk policies and are more commonly carried by a subcontractor than a prime or general contractor.

RIGGER'S LIABILITY INSURANCE

Rigger's liability insurance covers the liability to damaged property from the lifting or moving of property, such as using a crane to lift equipment or materials on a jobsite. If the crane were to drop the equipment, causing damage,

the general liability policy would not be triggered due to the care, custody, or control exclusion. By attaching a rigger's liability endorsement to the general liability policy, the coverage can be provided.

For example, if a contractor were to be installing new HVAC equipment on the top of building, this valuable equipment is most likely going to have to be lifted by crane to the top of the building. Should the equipment become unhinged or damaged during the rigging, picking, lifting or placing, the HVAC's damage would be excluded due the care, custody, or control exclusion, creating a large exposure for the contractor responsible for installing the equipment in undamaged, working order. The contractor can mitigate this exposure by incorporating the rigger's liability endorsement to their insurance program on an annual or project-specific basis. Keep in mind that if the HVAC equipment were to be dropped, the subsequent damage to the building and any other property would most likely be covered by the contractor's general liability policy.

CHOOSING THE RIGHT PRODUCT FOR YOUR PROJECT

For an insurance buyer responsible for protecting construction materials, it is strongly recommended to follow some general principles when assessing coverage gaps for these items. Determining the maximum value on any one truck, vessel, or flight for items being shipped for a project is important to ensure that, in the event of a loss prior to delivery, there is an adequate amount of coverage provided by the vendor/supplier. If not, you should procure your own cargo policy. Either way, be sure to engage with your insurance broker on your specific project or operations to help address and alleviate any coverage concerns, especially when determining proper limits.

References and Resources

1. Care, Custody, or Control Exclusion in the CGL, <https://www.irmi.com/articles/expert-commentary/care-custody-or-control-exclusion-in-the-cgl>
2. What is an Installation Floater?, <https://www.nustarinsurance.net/blog/2011/09/what-is-an-installation-floater>