



# PERSPECTIVES

---

**Builder's Risk Project Documentation: Why We Need It and How We Use It, Including Soft Costs and Business Interruption**

Our perspectives feature the viewpoints of our subject matter experts on current topics and emerging trends.

## INTRODUCTION

Contractors, brokers, and insureds often ask why we request extensive information in our Builder's Risk Request for Information (RFI). The purpose for the requests is that these documents provide a picture of the project's past, allowing us to become familiar with the ins and outs of the project, the contracts in place, the parties involved, and the plan for the project, not only prior to, but following the claim event. Providing this information in a timely manner following a loss event greatly improves the efficiency of the claim review process and reduces the time needed to provide recommendations to the carrier for allowable claim amounts and/or a final recommendation on the claim value and/or schedule impact.

Once engaged following an event, our Builder's Risk team must get up to speed, within a matter of weeks, on very large projects that have been ongoing for many months, or longer, and have a significant volume of relevant project information. The documentation outlined below helps to do just that.

## J.S. HELD BUILDER'S RISK RFI TEMPLATE

Over the course of many years and thousands of Builder's Risk claims, we have received feedback from contractors, brokers, and insureds which we considered in the preparation of an RFI template that is used on Builder's Risk claims handled by J.S. Held. While the list of requests may at first seem lengthy, the documentation we request includes only documents that the Insured or its General Contractor ("GC") should already have in their file as part of the normal course of construction. The sooner we receive these documents and information, the more prepared we can be for initial meetings with the Insured or GC to review the reported damages. For insureds to more efficiently provide the necessary documents, we have divided our RFI into sections to help prioritize the documents we need and allow insureds to transmit documents in stages.

## PHASE I

### Priority Claim Documents

J.S. Held's involvement may come days or months after the claimed loss event, but regardless of the timing, one of the first things we need to understand is the rough order of magnitude (ROM) value of physical damage and schedule delay, if applicable. Preparing a ROM allows us to better understand the impact of the event and claim on the overall project and helps to track the progress of repairs along the way. When we are involved early after an event, the ROM may come in the form of an estimate of damages or as a preliminary schedule analysis showing the impact to the project. If we get involved later, and after restoration work has commenced, the ROM may include supporting documents such as invoices, potential change orders (PCO), time & material (T&M) invoices, and/or a detailed schedule analysis; however, it ultimately leads us to the same analysis; determining the potential value and time impact of the claimed loss event on the overall project.

Additionally, receiving project photographs greatly facilitates the ability of our team to get up to speed, even if we get involved weeks or months after the loss date. Suggested photos to be provided include the following: photos of the actual loss event, photos showing the status of construction in non-loss related areas at the time of loss, photos showing damages, and photos showing the progress prior to and after the event. Job site photos are also important to our team's analysis of notated drawings showing the extent of the loss in various areas of the project. Provision of these records and information, which are typically maintained by the Insured or GC, helps our team get up to speed more efficiently.

### Priority Schedule Documents

The schedule documents provide us with the best understanding of the project status with respect to time, allowing us to better understand the progress, status, and plan prior to the loss and the impact to the project following the loss. Even without a potential delay claim, the schedules still represent an important part of our request and allow us to better familiarize ourselves with the project. Our request is typically for the baseline schedule and 3 months of periodic schedule updates issued prior

to the loss, as well as all schedules produced after the loss event. It should be noted that we request both hard copy and “native” versions of the schedules, such as Primavera P6 (“.XER” files). Native copies allow us to understand the relationships between the work activities (also known as “logic”) and the critical path for the project (defined as the longest string of activities with the least amount of float, which determines the duration of the project). Without native versions of the schedules, it is much more difficult to understand the relationships between the work activities and any changes made to the schedules during the update process; it would be like trying to understand the equations in an Excel workbook with only a PDF file—very difficult.

In the event there is a potential delay to the project, we ask that the Insured or GC to put together a delay narrative to explain and define the delay period. This is most easily presented by showing a claim fragment in the schedule. This will help determine whether the event directly affects the schedule and/or critical path and extends the anticipated completion date of the project beyond their pre-loss planned completion date.

## Priority Contract Documents

This may be the simplest of our requests, as nearly every construction project is defined by the contract documents. The executed contract between the Owner and GC establishes the relationship between the parties, the type of contract (lump sum, cost plus not to exceed, etc.), the contract completion date, and many other important contractual terms. The executed subcontract agreements between the GC and the various subcontractors involved with the loss repairs establishes the working relationship between these parties as well as the markup stipulations. These documents are crucial in our understanding of the relationship between the various parties working on the loss repairs.

Additionally, we request that all approved pay applications be provided along with the original schedule of values (SOV) for the project. We utilize these documents to help understand the billing progress of the project at the time of loss, which helps to establish the percent complete along with the CPM project schedules.

## Priority Change Management and Project Documents

The Potential Change Order (PCO) and Change Order (CO) logs help us to understand if additional scope, value, or time has been added to the project prior to a loss. These documents typically track when potential changes were submitted and whether they were denied, approved, executed, and included as part of the revised contract value or project duration prior to a loss event. The RFI and Submittal Logs also help us to understand if there were any clarifications provided by the design team on areas impacted by the loss.

While the pay applications and project schedule provide us an overview of the project leading up to the date of loss, the meeting minutes and daily reports provide us with more detail to understand the nuances of the project, potential issues that were identified, and the size and location of crews in various areas leading up to the loss. This helps us to further establish the progress of the project prior to the loss event.

## Priority Project Specific Requests

We include this section for project specific requests that may be important in our evaluation of the loss event. This may include various engineering reports, Certificates of Occupancy (CO), including temporary COs (TCO), letters from the Authority Having Jurisdiction (AHJ, otherwise known as the building department), etc. In some cases, we move these items to Phase II if they are less important to our initial research on the project.

Our goal with Phase I of our RFI is to gather the necessary information to bring us up to speed on the project as quickly as possible while allowing more time for the insured to collect and respond to the more detailed requests.

## PHASE II

### Secondary Project Documents

The Phase II section of our RFI requests the supplementary/complementary documents to our initial requests, allowing for further review of the project documents necessary to gain a deeper understanding of the project.

Supplementary to the project schedule in our Phase I request, the receipt of the project monthly reports for three months prior to the loss, and for the months that follow the loss, helps ensure a well-rounded narrative of the project status. These reports are normally written by the contractor and provide project-wide information regarding the status of construction in all areas of the project. Reviewing these monthly reports in conjunction with the native schedules, daily reports, and meeting minutes provides us with a more detailed understanding of the project.

The Phase II section for Contract Documents takes a more in-depth review of project information including executed change orders, schedule of values, and further contract agreements between the owner and architects, engineers, construction managers, etc. This information provides insight into previously negotiated terms and conditions that may not be outlined in the Construction Contract.

Finally, we request documents such as correspondence (including emails) third party inspections, daily reports, meeting minutes, and contract design documents to understand further project details. These documents often provide additional scheduling, progress, and resource (labor, material, and equipment) information that is utilized in our claim review.

## BUILDER'S RISK POLICY AND SUPPLEMENTAL COVERAGES

In addition to the coverage of Property Damage to the asset, most construction projects that are a Work-in-Progress have additional insurance coverages available to Insureds. These additional coverages extend to protecting the financial investment and the anticipated operating profits of the expected business operation that is intended

to commence in the damaged asset. These coverages work "in tandem" and have a close relationship with the Property Damage evaluation and the subsequent delay. These coverage areas are called the Soft Costs and Business Interruption (BI) coverages. These coverages are directly connected with a subsequent delay to the completion of the project following a covered Property Damage event. For more information on the differences in Builder's Risk versus Property Damage in Time Element covered losses, please see the article [How Do Builder's Risk Claims Differ from Property Damage Claims?](#)

Builder's Risk Policies provide a variety of Insuring Coverages. Each insuring company has specific policy and coverage language but there are some relatively standard coverages. A review of specific policy language and coverages by insurance adjusters is very important when they interpret coverage and advise consultants on calculation of potential extra costs and advising insurance adjusters.

Evidentiary documentation of claimed Soft Costs and BI losses are required in order to support insured's claims and to provide adjusters with information in the process of adjusting the Soft Costs and BI claims. Certain property damage documentation is also often relevant in the review and analysis of Soft Costs and BI losses. Coordination between property damage, soft costs and B.I. consultants and adjusters are necessary especially in the assessment of the delay period and to ensure there are no duplication of costs.

### Coverage and Coverage Period

A Builder's Risk policy's main focus is to provide insurance coverage for development projects and are in typically in place through to end of construction. Builder's Risk coverage is usually related to new construction, but coverage may also be for substantial redevelopment /renovation projects. Depending on the use of the constructed property the end of the construction period may be when a jurisdictional authority issues a temporary or permanent Certificate of Occupancy (TCO or CO). For example, for either residential and commercial rental projects there often are requirements before the status of projects can be converted from builder's risk insurance coverage to permanent insurance, such as percent rental occupancy, sales revenue or units sold. For custom use and highly specialized construction projects there may be

additional requirements to qualify for project completion. For example, there may be special use operational requirements before qualifying for permanent status.

## Soft Costs

The purpose of soft costs coverage is to insure the economic risks caused by project delays resulting from a covered peril. The cost of repairing or replacing the damaged property will usually be covered by the property insurance and will include: the cost of removing the debris of the damaged property, purchasing new materials, and the labor involved in replacing the damaged property with the new property. However, depending on the precise policy language, traditional BI coverage, including extra expense and expediting expense, may not reimburse an insured for certain economic losses, such as advertising and promotional expenses, commissions or fees for the renegotiation of leases, additional insurance premiums for the necessary property and liability coverage to be in force for the additional time it will take to finish the project, interest on construction loans, taxes, and rental of construction equipment not specifically involved in repairing the damaged property.

Many construction projects include significant costs before, during and sometimes subsequent to the actual physical hard construction costs. Pre-construction costs related to a development project often include associated costs such as property taxes, financing, engineering, architectural, legal, marketing, and other professionals. In general, Soft Cost language indicates coverage is subject to a "Covered Cause of Loss" and "Soft Costs" mean additional expense over and above what was anticipated. *(Note the use of the word "additional". This is intentional and is meant to convey coverage is only for additional costs over and above costs that would have been incurred if there was no delay in construction. It is also intentional that the "Soft Costs" are limited to costs that are listed in a specific insuring policy and may vary from the normal general coverages.)* The anticipated costs are based upon the anticipated date of completion of the project.

The Soft Costs of a typical covered Construction Project Site which occurs because of a Covered Cause of Loss which delays the project, and is often limited to only the following:

1. Additional interest expense on money borrowed to finance construction or repair,
2. Additional realty taxes and real estate assessments which are incurred and continue during a period of delay,
3. Additional advertising, marketing and promotional expenses which either become necessary due to a covered loss or are extended and extra due to a covered loss,
4. Additional commissions, resulting from renegotiating leases or sales due to delay of project and,
5. Additional reasonable and necessary legal, accounting, architectural and other professionals that maybe named in the policy.

There may also be specific soft costs listed in an insuring policy. This may be due to the specific business risks or specialized industries.

For example the following soft cost item was included in a Builders Risk - Soft Cost policy.

*Additional reasonable "Building Systems Commissioning" Expense, which becomes necessary as a result of a "Loss". "Building Systems Commissioning" means the systematic process of ensuring that a building's complex array of systems is designed, installed, and tested to perform according to the design intent and the building owner's operational needs. "Building Systems Commissioning" applies to newly installed or repaired systems.*

## Soft Costs and Business Interruption Deductibles

A comprehensive deductible on a Builders Risk policy may include the property coverage as well as Soft Costs, BI losses and other supplemental coverages. These deductibles may be a stated dollar amount or a stated time sensitive waiting period deductible. Deductibles are often separately stated for property losses, Soft Costs and BI losses.

There can also be customized deductibles including deductibles based on percent of values or equivalent day

period values. Consultation with insurance adjusters is often necessary to determine how deductibles are accurately calculated and applied.

## Delay Versus Business Interruption and Rental and Sales Values

Both Property Damage and Builder's Risk claims may have a BI component. With Property Damage claims, the BI is typically based on how long the facility was delayed due to the covered physical damage repairs.

In Builder's Risk claims, the BI component may be due to an Insured being unable to use the facility for its intended revenue-generating purpose. In these claims, a Forensic Accounting expert analyzes the financial information submitted by the Insured to ascertain the BI, very similar to a Property Damage BI claim. However, Builder's Risk claims often also have a delay component, which Property Damage claims do not have. When there is a delay component to a claim, which is an inherent risk for Builder's Risk claims, the Builder's Risk expert needs to determine how construction progress and the overall project's substantial completion were impacted by the loss. They review the pre-loss schedules, site inspection photos, daily logs, and other project documentation to determine when the project was scheduled to finish and when.

The RFI provided to insureds include basic standard requests for financial documents and information but in some situations also include specific customized requests related to specialized businesses and industries.

## CONCLUSION

Builders risk coverage presents unique issues which should be and are often addressed before construction begins. Policy forms are different and the precise terms and conditions necessary should be reflected in the construction documents and reviewed in detail by all concerned. Builder's Risk claims differ significantly in nature from other property insurance claims since they occur during the course of construction when the property may be in various stages of completion. The loss can affect the project as a whole and/or the progress of other project activities not considered at the time of the loss. Our use of our standardized RFI

template for requesting documents provides a prioritized, efficient, and focused approach, which results in a more expedited claim analysis for all parties involved in the recovery of the project following a loss.

## ACKNOWLEDGMENTS

We thank our colleagues Keegan Petty, Katie Twomey, Micah Pilgrim, and John Curran for providing insight and expertise that greatly assisted in this research.

Keegan Petty is a Senior Managing Director in J.S. Held's Builder's Risk Practice. Keegan has worked on some of the largest property & builders risk claims handled by the company, including the World Trade Center claims following Hurricane Sandy and the Seattle Tunnel Project. His work consists primarily of builder's risk claims, delay claim analysis, onsite damage assessments, site monitoring, repair estimate development, and litigation support. He has worked as both an estimator and project manager for a large commercial contractor in the Seattle area, Bayley Construction. His onsite project management experience includes projects ranging from \$800,000 up to \$68 million, with background in estimating, scheduling, subcontractor coordination, day-to-day operations, and more.

Contact Keegan Petty at [kpetty@jsheld.com](mailto:kpetty@jsheld.com) or +1 510 313 1396.

Katie Twomey is an Executive Managing Director in J.S. Held's Builder's Risk Practice. Katie Twomey serves in the Builder's Risk practice group as the Practice Lead. Katie brings extensive experience in time element/delay analysis, CPM scheduling, contracts, cost management, and estimating for a diverse portfolio of projects. Katie's work consists primarily of delay and schedule analysis, cost and estimating analysis, litigation, and site inspection. Katie provides expertise for resolving complex insurance claims in both Builder's Risk and Property Damage losses. Some of the project types that Katie has been instrumental in resolving claims include residential, commercial, office, modular, hospital, hospitality, industrial, education, sports, and marine.

Katie Twomey at [ktwomey@jsheld.com](mailto:ktwomey@jsheld.com) or +1 206 895 9522.

Micah Pilgrim is a Senior Vice President in J.S. Held's Forensic Accounting – Insurance Practice. Micah specializes in the measurement of Economic Damages and Forensic Accounting. His experience has involved almost every industry and includes damage measurement resulting from business interruption, construction defect, contract disputes, property loss, consequential losses, fraud, product liability, wage and hour cases, and employee pay disputes. Mr. Pilgrim has significant experience in the measurement of natural resource losses including timber, lumber, crop, wind energy, and biodiesel. His fraud assignments have involved embezzlement, construction claims, theft of cash, theft of inventory and other personal property, and employee dishonesty.

Contact Micah Pilgrim at [mpilgrim@jsheld.com](mailto:mpilgrim@jsheld.com) or +1 206 895 9527.

John Curran is a Senior Vice President in J.S. Held's Forensic Accounting – Insurance Practice. Mr. Curran has testified as an expert witness on numerous occasions in State and Federal Court as well as providing witness testimony at depositions. He has reviewed more than 900 business interruption and physical damage claims for insurance companies and claimants, whose industries include forest products, food processing, mining, general manufacturing, retail, service, hospitality, medical facilities, hospitals, research facilities and organizations, and real estate. His experience includes consultation and assistance in organizing claim supporting documentation; detailed review and investigation of documentation supporting measurement of claims filed; analysis of claim compliance with insurance contract, including actual loss sustained provisions of contract; preparation and presentation of oral and/or written reports on review and analysis; and assisting parties for purposes of resolving and settling business interruption measurement issues in accordance with insurance contracts.

Contact John Curran at [jcurran@jsheld.com](mailto:jcurran@jsheld.com) or +1 206 895 9514.

This publication is for educational and general information purposes only. It may contain errors and is provided as is. It is not intended as specific advice, legal or otherwise. Opinions and views are not necessarily those of J.S. Held or its affiliates and it should not be presumed that J.S. Held subscribes to any particular method, interpretation or analysis merely because it appears in this publication. We disclaim any representation and/or warranty regarding the accuracy, timeliness, quality, or applicability of any of the contents. You should not act, or fail to act, in reliance on this publication and we disclaim all liability in respect to such actions or failure to act. We assume no responsibility for information contained in this publication and disclaim all liability and damages in respect to such information. This publication is not a substitute for competent legal advice. The content herein may be updated or otherwise modified without notice.