

CONSTRUCTION INSURANCE KNOW-HOW

09 CARE CUSTODY CONTROL (CCC)

INTRODUCTION

When a builder or contractor is either

- working on someone else's building, or
- in control of a site on which tangible property is located, or
- acting as a Bailee,

they could become legally responsible for any loss or damage to that property. In this circumstance SURA Construction considers such property to be in our insured's Care Custody Control.

This edition of "Know-How" helps explain the extent of coverage under the SURA policy, how it works in practice and how SURA's innovative approach can help you, our broker, and our mutual clients.

HOW THE LAW OPERATES

Typically, a construction contract sets out what responsibilities each party to the contract has for any property located on the Project Site. It should also specify who is to insure that property.

In the absence of a formal agreement that specifies whether or not our insured has in fact assumed care custody control of anything, the law seeks to establish if a contract of bailment exists.

Bailment is the transfer of personal property by one party (the bailor) into the possession, but not ownership, of another party (the bailee). To create a bailment, the bailee must have actual physical control with the intent to possess the property and in doing so assumes an obligation to take reasonable care of the property.

Bailment can be constructive, i.e. the bailee is paid to look after the property, or gratuitous in which there is no payment. A lower standard of care is imposed upon a bailee in a gratuitous (also known as naked) bailment meaning a gratuitous bailee need use only slight care and is liable only for gross negligence. In deciding what level of care is appropriate the courts might also consider the benefit to each party of the bailment. For example, the bailee might receive payment for their service. The greater the benefit to the bailee the higher the duty of care owed to the bailor.

A TYPICAL SCENARIO

Our intrepid builder, Joe Blogs Building Company (JBBC), is undertaking a minor house renovation of the kitchen and bathroom.

The owner's home building policy insurer has agreed to maintain cover during the renovation. And as this project qualifies for automatic coverage under JBBC's annual construction policy there is no need for JBBC to refer this project to their broker.

Fortunately, you had arranged for the Care Custody Control extension to Section 2 Third Party Liability for a sub-limit of \$50,000 under Joe's SURA annual policy.

The policy also has a \$10,000 sum insured for Employee Tools under Section 1 (see [KNOW-HOW 07 Employee Tools](#))

Midway through the job and late at night a temporary pipe charged with water fails and the house is flooded, ruining the gyprock on the kitchen walls, the new kitchen cabinetry awaiting installation, the carpets, and some furniture in the adjoining living room.

In addition, several construction tools owned by a sub-contractor and left on the floor overnight are damaged beyond repair.

TYPES OF COVER SURA PROVIDES

Property in Care Custody and Control is an exclusion in the SURA policy. When needed cover is extended by endorsement typically with a sub-limit of Liability for a modest premium loading. For higher limits a larger premium may be justified.

Could property owned by others be covered under Section 1 Material Damage? Yes, it can, again by endorsement. However, caution is advised because for adequate cover to be provided the full replacement value of the property must be insured. In our typical scenario there was no obligation on JBBC to insure the existing house under Section 1 of their annual policy and fortunately they have that \$50,000 sub-limit for CCC under Section 2.

HOW DOES SURA'S COVER WORK?

JBBC decide to lodge a claim for the water damage under their SURA construction policy. The claim is a mix of indemnity between Section 1 and 2 of the policy.

Section 1 would pay for the kitchen cabinetry as this is part of the construction works but not for the damaged tools as these are owned by sub-contractors.

Section 2 would likely pay for the damaged gyprock in the kitchen via the CCC endorsement as this part of the house was being worked upon by JBBC at the time of the loss.

Would the sub-contractor's tools be covered under the CCC endorsement to Section 2? Probably not, as JBBC doesn't appear to have accepted them into their possession nor did JBBC have any intent to possess them. In other words, a contract of bailment has not been established.

As for the carpets and other contents the home building/contents policy would respond. This insurer might attempt to recover their loss from JBBC if they felt JBBC were responsible for the damage. For the recovery action to be successful JBBC would need to be found negligent.

RISK MANAGEMENT TIPS

What things could you do to better understand which type of cover best suits your client's needs?

- Encourage your builder clients to inform you whenever they engage in renovation projects to make sure that the correct cover, including applicable limits of Indemnity are adequate and in place.
- If your client asks for a first loss cover for Pre-Existing Property under Section 1 of their annual policy be aware that cover under Section 2 Liability is excluded for property that is insured under Section 1.
- If your builder clients use sub-contractors, then the sub-contractor agreement should clearly explain who is responsible for property left on the contract site.
- If your builder provides an on-site container for storage, then a sign advising sub-contractors that their property is stored at their own risk should be prominently displayed.

For any further enquires we are always happy to help, please contact either:

Jim Wiechman
Underwriting Manager, Construction
Jim.Wiechman@sura.com.au
T: 02 9930 9574
M: 0400 090 722

Michael Holbrook
Senior Engineering Underwriter, SA and NT
Michael.Holbrook@sura.com.au
M: 0414 836 172