

WELCOME

Message to our Readers

Thank you for reading the Winter 2017 issue of the Welby, Brady & Greenblatt, LLP Construction Report. We are pleased to bring you a summary of new legal happenings related to the construction industry as well as highlight the impact Firm Partners and Associates are making on the Legal Industry and the markets we serve.

In this issue, we are pleased to present articles written by our Partners. Gregory J. Spaun discusses *Does Your Builder's Risk Policy Really Cover What You Need to Build?*; and Thomas H. Welby shares *New OSHA Guide to Building a Safety Program "From the Ground Up."*

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Does Your Builder's Risk Policy Really Cover What You Need to Build?

By: Gregory J. Spaun, Esq., Partner



Gregory J. Spaun

First party property insurance has been around for centuries, generally dating back to the aftermath of the Great Fire of London in 1666. Property coverage is a great way to cover a completed structure from the usual perils of fire and weather, et cetera. However, what if the property you wish to insure is an incomplete construction project? It is well known that construction is, by its nature, perilous.

Further, a typical first party property insurance policy will not cover incomplete structures or construction activities. Enter, builder's risk insurance.

Builder's risk insurance is a specialty type of property insurance specifically designed to cover the extra risks that may befall a property under construction. Builder's risk insurance is also available to a contractor. This is important because a contractor who is under an obligation to safeguard the property during construction (and is concomitantly liable for any damage that occurs to that property) does not have any traditional insurable interest in such property because it is not the owner.

Like many policies, builder's risk policies are increasingly subject to exclusions. These exclusions have been created as carriers gain experience with the product and carve out. New York's courts dealt with two of these exclusions in the recent case of *Lend Lease (US) Construction LMB, Inc. v Zurich American Insurance Company* (___NY3d___, 2017 WL 572478, 2017 NY Slip Op 01141 [February 14, 2017]). The facts of *Lend Lease* will be familiar to many in the Tri-State area, as they arise out of Superstorm Sandy and the crane which was left dangling over West 57th Street in its wake. The crane was erected in such a way that parts of the crane (where it was anchored to the building) would

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