



IRM NORTH EAST REGIONAL GROUP

COMMERCIAL BUILDING LATENT DEFECTS AND ENVIRONMENTAL INSURANCE





Agenda

- What is Commercial Latent Defects Insurance
- Policy covers
- Collateral Warranties
- Collateral Warranties v Commercial Latent Defects
- Environmental Risks
- Questions



Defects

Defects so severe at Clissold Leisure Centre it could have to be torn down and rebuilt

Demolition fear over £30m pool



Studen shattering of office window sparks new calls for probe into nickel sulphide inclusion in gl

Fresh outbreak of 'glass cancer'

By SEAN CROGAN



Probe into cracks at Airdrie stadium



What is Latent Defects Insurance





What is Latent Defect Insurance?

- Introduced to UK market 25 years ago
- Number of previous Insurers active in the market
- Cover against inherent defects undiscovered at the time of practical completion
- Fault due to defective design, workmanship or materials
- Fault comes to notice within a 10 year post completion period



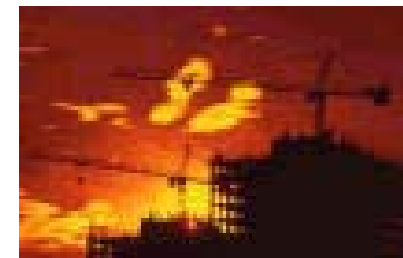
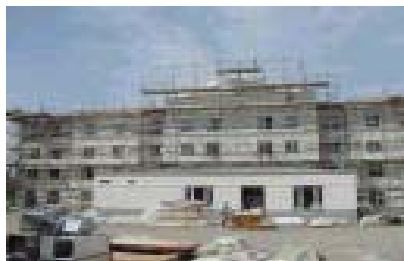
What properties can be covered?

Virtually any commercial property

- Offices
- Hotels
- Factories/Factory Units
- Industrial Estates
- Shops
- Care Homes
- Leisure Facilities
- Public Buildings



Policy Covers



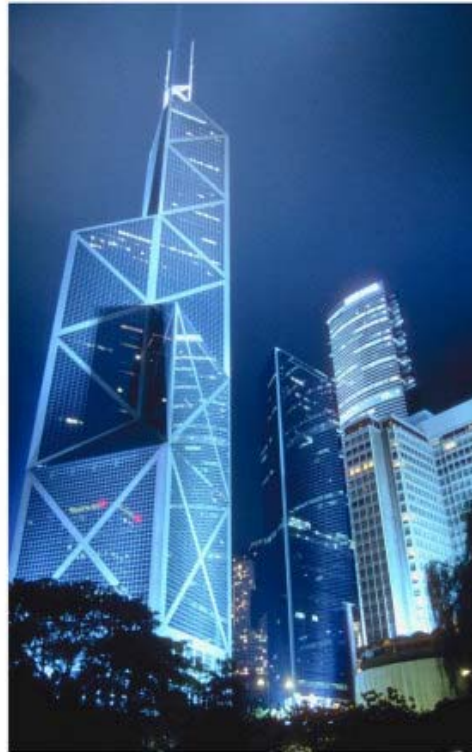


Structural & Weatherproofing

- Defects within
 - Load bearing structure / Roofing system / External envelope / Weatherproofing System / Foundations
- Claims arise from
 - Defective Materials / Defective Workmanship / Defective Design
- Circumstances
 - Defects which manifest themselves after the date of Practical completion of the building and which result in damage to the building
- Exclusions
 - Weatherproofing for the first 12 months
 - Waiver of subrogation rights
 - Consequential losses (option)
 - Excess 1% - 2%



How Cover is arranged





How Cover is arranged

- Proposal Form with supporting plans/reports and contractual arrangements supplied
- Insurer indicates premium and technical inspection fee
- Acceptance confirmed with payment of a deposit premium & inspection fee
- Certificate of intent issued by insurer
- Technical Inspection regime undertaken
- Balance of premium paid upon completion and cover confirmed



COLLATERAL WARRANTIES





Collateral Warranties

- Industry standard
- Contractual route to recover losses

There has **NEVER** been a successful recovery under a collateral warranty through the English courts



What are the issues with Collateral warranties

- Breach of warranty must be proven
- Litigation required to recover
- Party may not exist when claim arises
- Warranty supported by assets or insurance
- Drafting is rarely foolproof
- Professional Indemnity insurance issues



Latent Defects v Collateral Warranties

- Non-negligence based protection
- First party cover - control rests with Insured
 - Saving time
 - Saving expense
 - Removing the risk of a expensive and uncertain litigation
 - Avoiding conflict
- Unlimited assignments

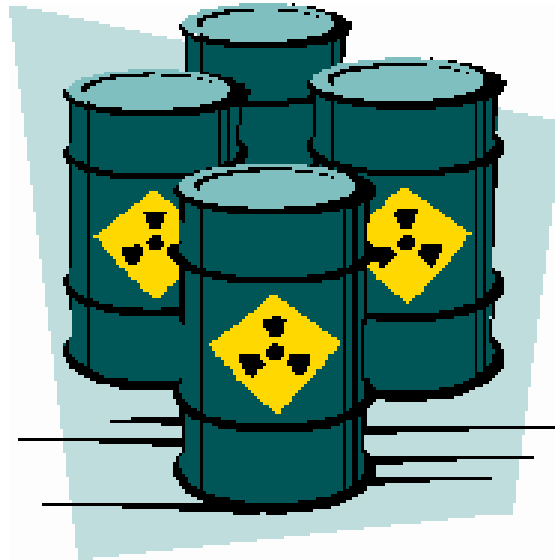


Latent Defects v Collateral Warranties

- Speedy rectification
- Inflation provision
- Asset protection against a future sale
- Addresses tenants concerns – often making lease negotiations easier
- LDI promotes a team approach to developments
- Provided by “A” rated Insurer
- Warranties agreed may be overlooked
- Policy continues even if parties do not
- Fully assignable



Contaminated Land





Risks associated with ownership or tenancy of a site

Common environmental concerns

- Made Ground
- Landfills / Former Landfills
- Illicit Activities
- Adjacent contaminative uses
- Reclaimed areas
- Petrol Stations / Heating Oils
- Emotive contamination / Stigma eg Asbestos



Areas of Potential Liability / Costs

Liabilities

- Statutory/Clean up Liability
- Civil Liability
- Contractual Liability
- Criminal Liability

Costs

- Legal Costs
- Technical Costs
- Clean up Costs



Process of identifying & dealing with contamination

Identifying Contamination

- Phase I Environmental Investigation
- Phase II Environmental Investigation
- Phase III Environmental Investigation (Remediation)
- Baseline study



Dealing with the Issue

- Remedial Action (Phase III)
- Environmental Discounting
- Contractual Remedies
- Environmental Management plan
- Provision of Insurance
- Contractual Remedies supported / replaced by Insurance



Insurance Solutions - Cover for previous use

- Usually covers Legal costs, Technical costs, Clean Up costs, Third party Costs following receipt of a Notice
- Long Term site specific cover (up to 10 years)
- Cover for on-site unknown contamination and on-site unidentified contamination
- Known contamination requiring remediation excluded until successfully remediated
- Change in legislation is covered
- Failure of implemented Remediation or Change in Clean up standards
- Migration of contamination off-site
- Suitable for proposed end use



Insurance Solutions - Cover for existing use

- Usually covers Legal costs, Technical costs, Clean Up costs, Third party Costs following receipt of a Notice
- Annual site specific cover
- Cover for sudden / accidental and gradually occurring contamination
- Migration of contamination off-site
- Suitable for proposed end use



Questions





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