

PART

1

Property + Energy

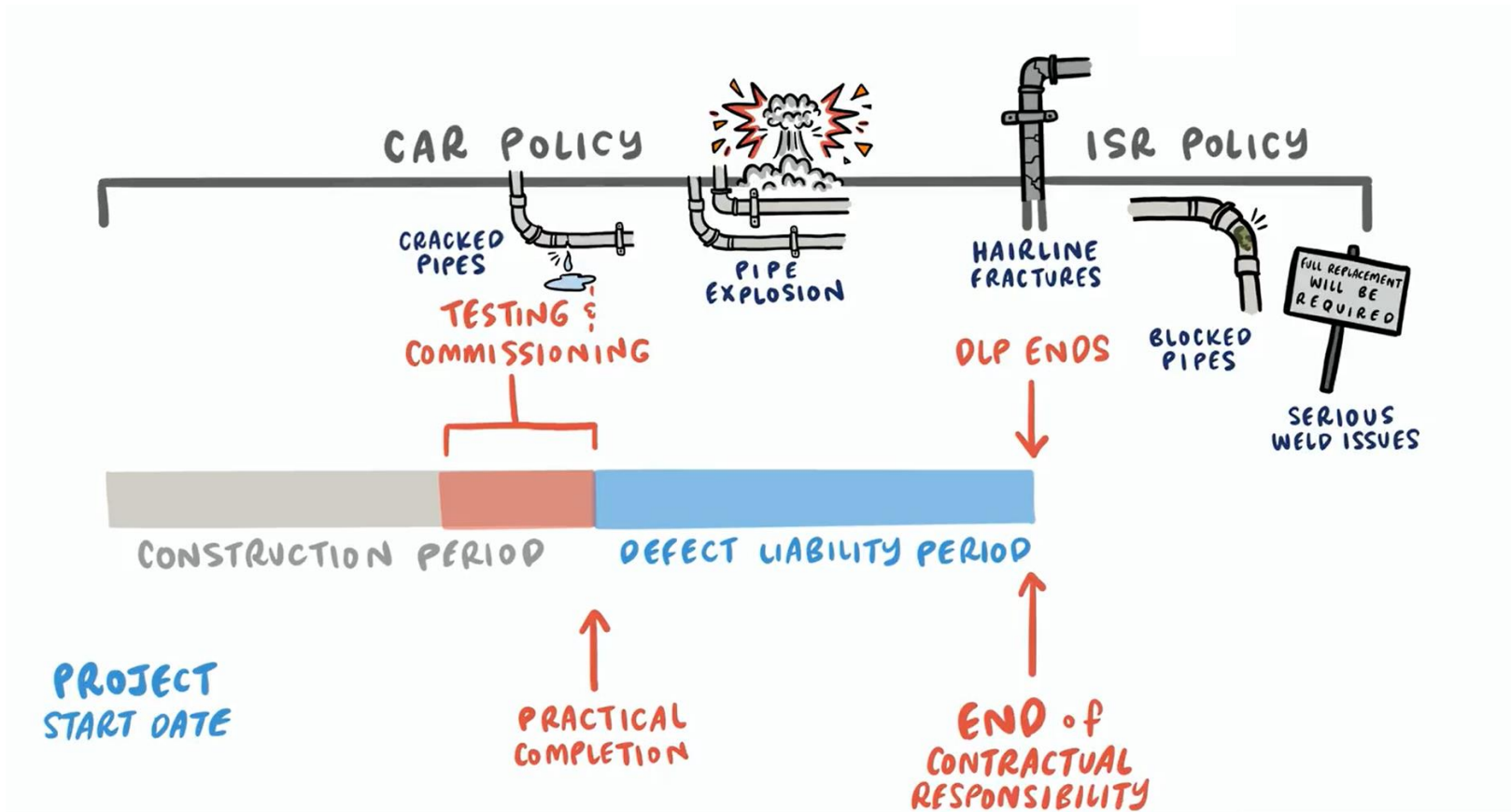
Emerging Talent Series



KEY TAKEAWAYS

- All risks policies require chance/fortuity/risk of loss. They don't cover all losses, including those that are inevitable.
- **Insured to prove:**
 - Physical loss, destruction or damage; to
 - Property Insured
- **'Damage' requires:**
 - A physical alteration or change; that
 - Adversely affects the Property Insured's value/usefulness
- **Defects:**
 - Are an inherent characteristic of property which make it less valuable or useful.
 - May lead to damage, but damage can never cause a defect.
 - Will be expressly excluded in most policies. These clauses may also provide a limited writeback.





Q&A

Typically, doesn't an ISR policy start when a project reaches Practical Completion (e.g. defects period run concurrent with ISR)?

Ideally this would be the case. Having both the defect liability period (DLP) and ISR run concurrently will ensure there are no gaps in cover.

What about fire occurring during DLP to the CW and cause NOT due to the construction?

DLP cover under a CW policy is usually only engaged where loss manifests during this period due to damage which occurred during the construction period. Where damage occurs during the DLP which is not due to the construction, this will usually fall for consideration under the ISR policy.

How does the Physical Damage condition apply to electronic componentry and would damage to an electronic item be limited to its output performance as a measure of damage?

Electrical components will be no different to other property. They will be "*physically damaged*" when an insured peril causes a physical alteration/injury to them in accordance with the case authorities. This may exhibit itself in a loss of functionality, value, or amenity. Output performance is likely to be a key measure, but there may be circumstances where decreased lifespan, compromised connections or other lesser forms of physical harm are also identified. Performance will also be a key consideration for reinstatement, which we will consider in future sessions.

What is the distinction between damage and physical damage? Can you provide an example where something may be damaged but not physically damaged?

Damage has long been interpreted as requiring a physical change to property insured to distinguish it from pure economic loss. It is wider than *physical damage*. *Physical Damage* adds a significant qualification to the type of *damage* and the authorities support the proposition that something more such as physical change in the form of injury or harm to the property insured. As an example, *Transfield v GIO* demonstrates that pipes blocked with grain that had infiltrated them was not *physical damage*, even though there was a loss of usefulness and the pipes could only be cleaned out by removal and re-installation (which in the author's view might have been enough to constitute *damage* given there was a physical change in condition within the pipe). The following cases discuss and analyse these terms: *Technology Holdings Limited v IAG NZ Limited & Anor* [2008] NZHC 1228, *EJ Hampson v Mining Technologies Australia Pty Ltd* [1997] QCA 466, *R & B Directional Drilling Pty Ltd (in liq) v CGU Insurance Limited (No 2)* [2019] FCA 458.

When does damage “happen” when it appears to have occurred over time?

Damage will typically happen when it's impact on the insured property is more than *de minimis*. While usually this is easy to identify (i.e. as there is a single event like a fire), it is more difficult to identify in circumstances of progressive damage. Expert evidence will usually be essential in determining this issue.

In situations where part of a product is defective, but this has caused damage to another part of the product (e.g. where there is 3 coats of paint applied but only one coat is defective), would the entire product be classified as defective and not covered?

and

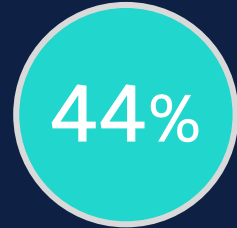
Waterproof membrane not applied between external tiles and slab causing tile movement – tiles had to be lifted up & replaced with new tiles. Is this consequential repairs not covered or subsequent damage (e.g. no actual physical damage to tile)?

The answer to these questions will be part of our next session on Exclusions during Q1 next year.

Poll results

Why does Springs Ltd need both contract works and ISR cover?

- a) Professional Indemnity insurance was too expensive
- b) To provide continuity in cover for property damage risks during the period from construction of the Factory through to its operation
- c) To cover Springs for liability associated with the construction and operation of the Factory



What is Springs' Contract Works policy intended to cover?

- a) Loss of use of the Factory during construction and commissioning of Springs' Factory and buildings
- b) Damage/loss to property insured during construction and commissioning of Springs' Factory and buildings
- c) Damage/loss to Springs Factory and Buildings after defects liability period



Poll results

Which of the following options best describes physical damage to Springs' property?

- a) Pipe Explosion, Cracked Pipe, & Blocked Pipe
- b) Pipe Explosion, Cracked Pipe, Hairline Fractured Pipe
- c) Pipe Explosion, Cracked Pipe, Blocked Pipe, and entire Pipe System containing the bad welds



32%

Looking at the scenario, is there a situation where an event has occurred which resulted in a need for an item to be replaced, but no actual damage appears to have arisen from it?

- a) The contractors work was exceptional. Springs have just experienced some bad luck
- b) The pipe system was damaged by those delicious carbonated bubbles
- c) The pipe system was defective
- d) The entire plant is defective



35%

RESOURCES

Video recording of the session:

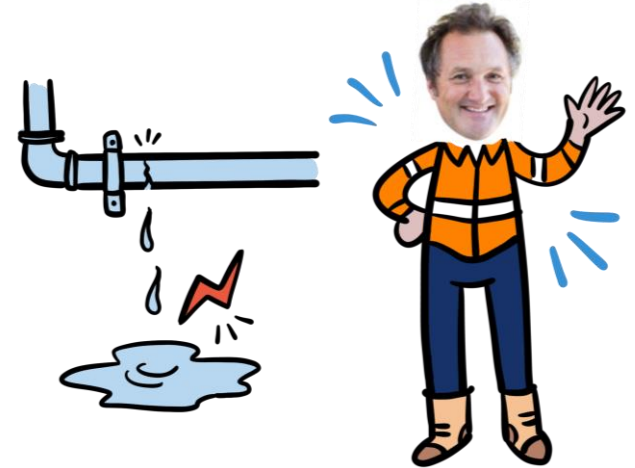
<https://vimeo.com/484215518/56363570a0>

Presentation slides:

Click [here](#)

Other W+K articles and insights:

<https://www.wottonkearney.com.au/knowledge-hub/>



FEEDBACK & QUESTIONS WELCOME!

We welcome any feedback you have on the presentation materials, format, or what could be done to improve the next session in our Emerging Talent Series. If you have any feedback or further questions, please don't hesitate to email one of our presenters directly.

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