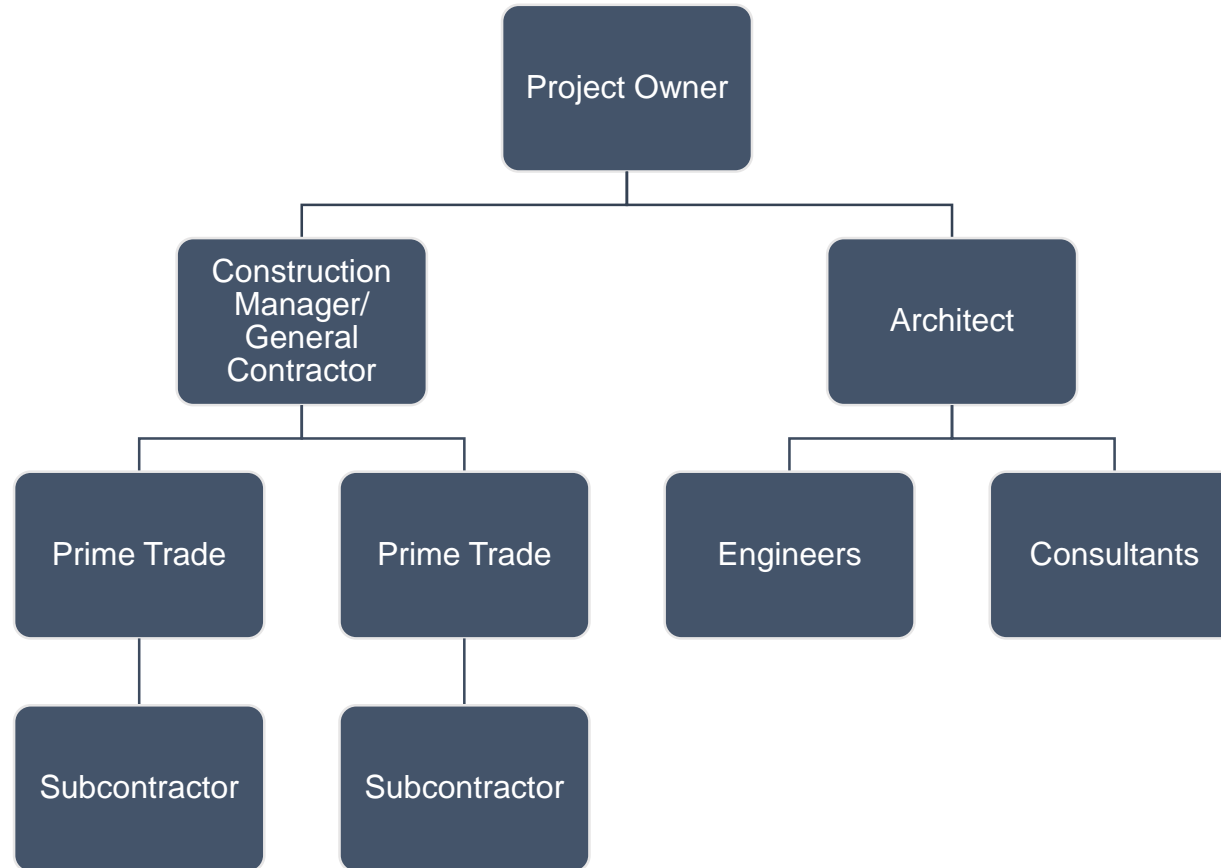




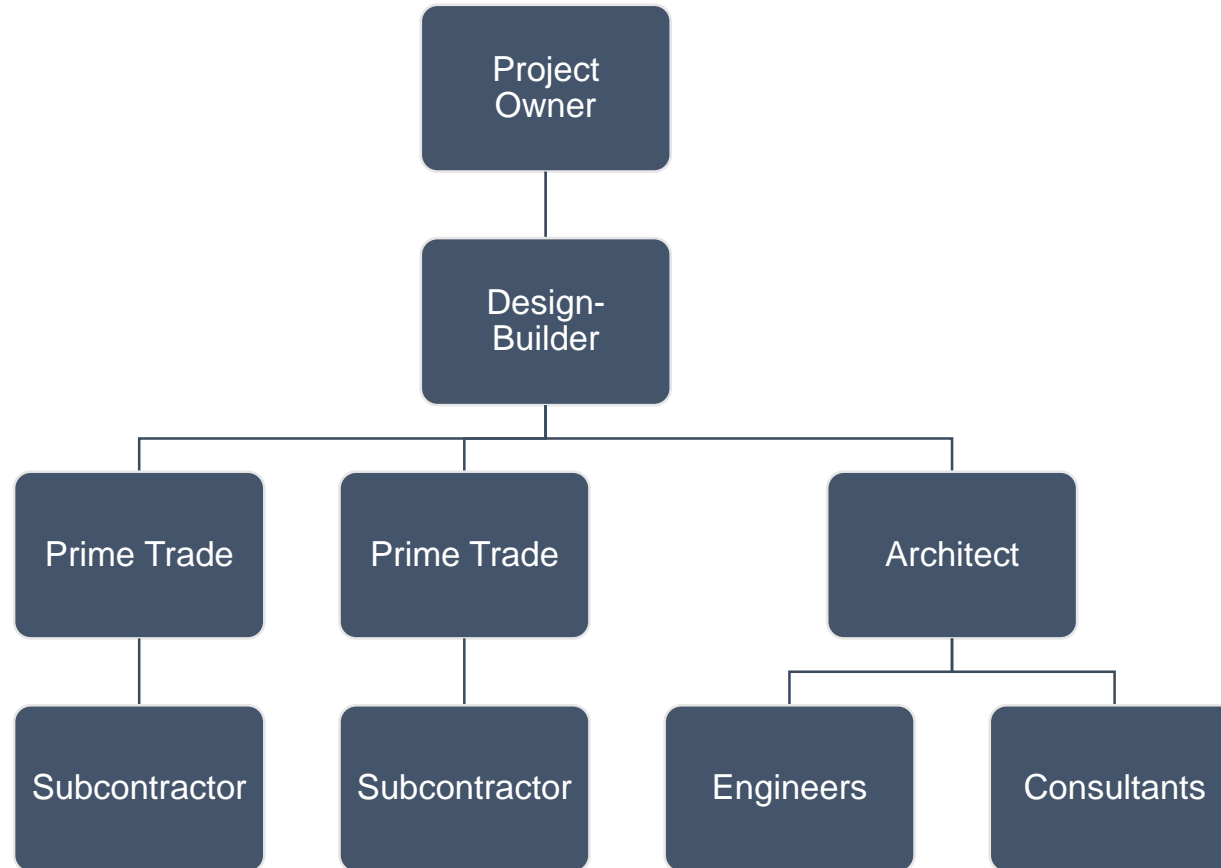
ROADMAP TO COVERAGE

Michael V. Pepe & Ashley L. Cooper
August 19, 2019

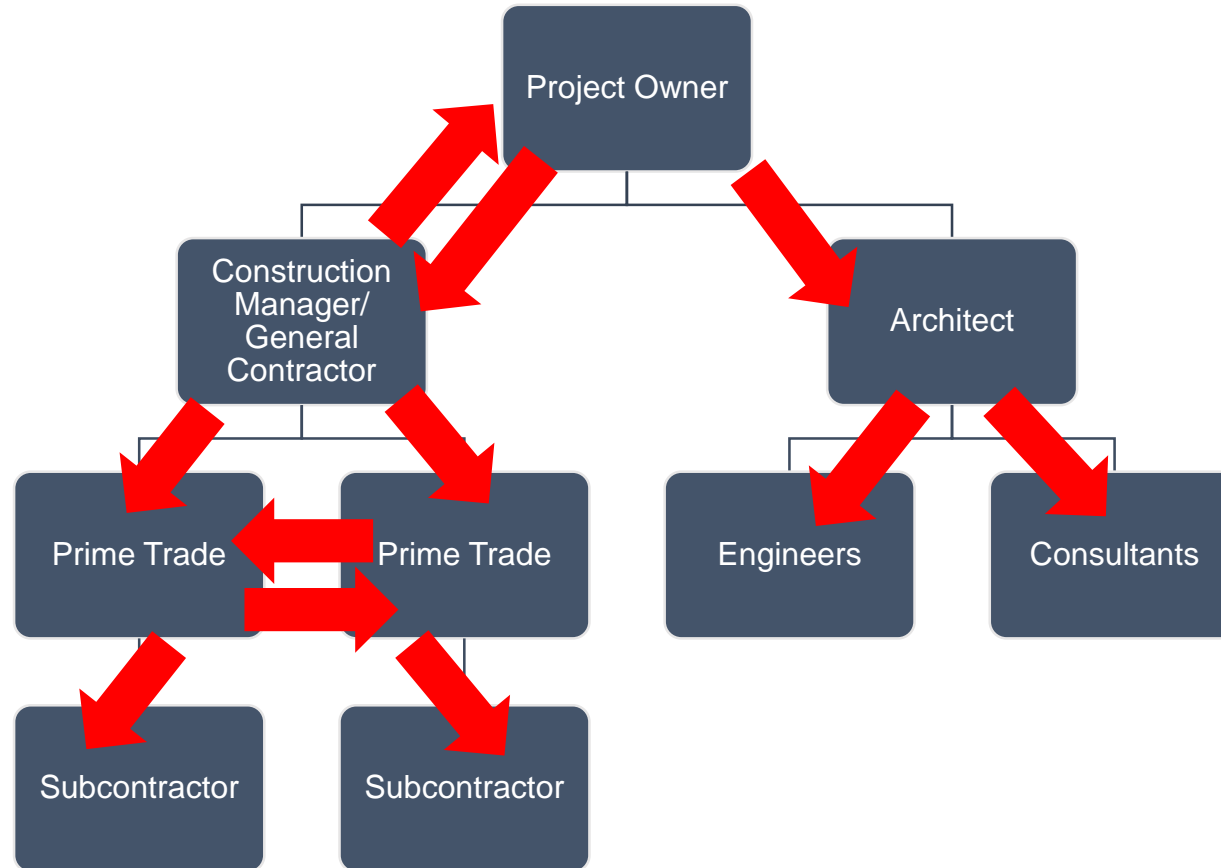
DESIGN BID BUILD



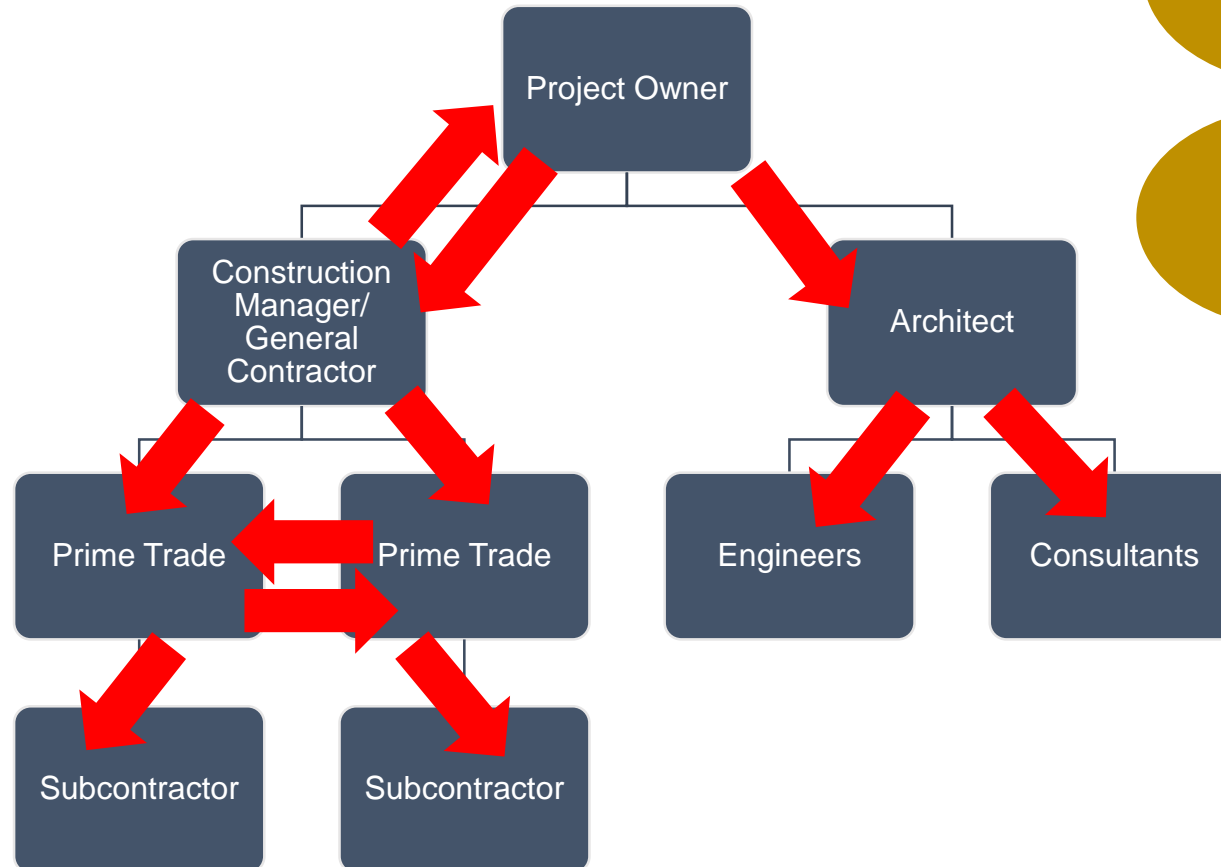
DESIGN BUILD



DESIGN BID BUILD



DESIGN BID BUILD



Builders
Risk

Prof
Liability

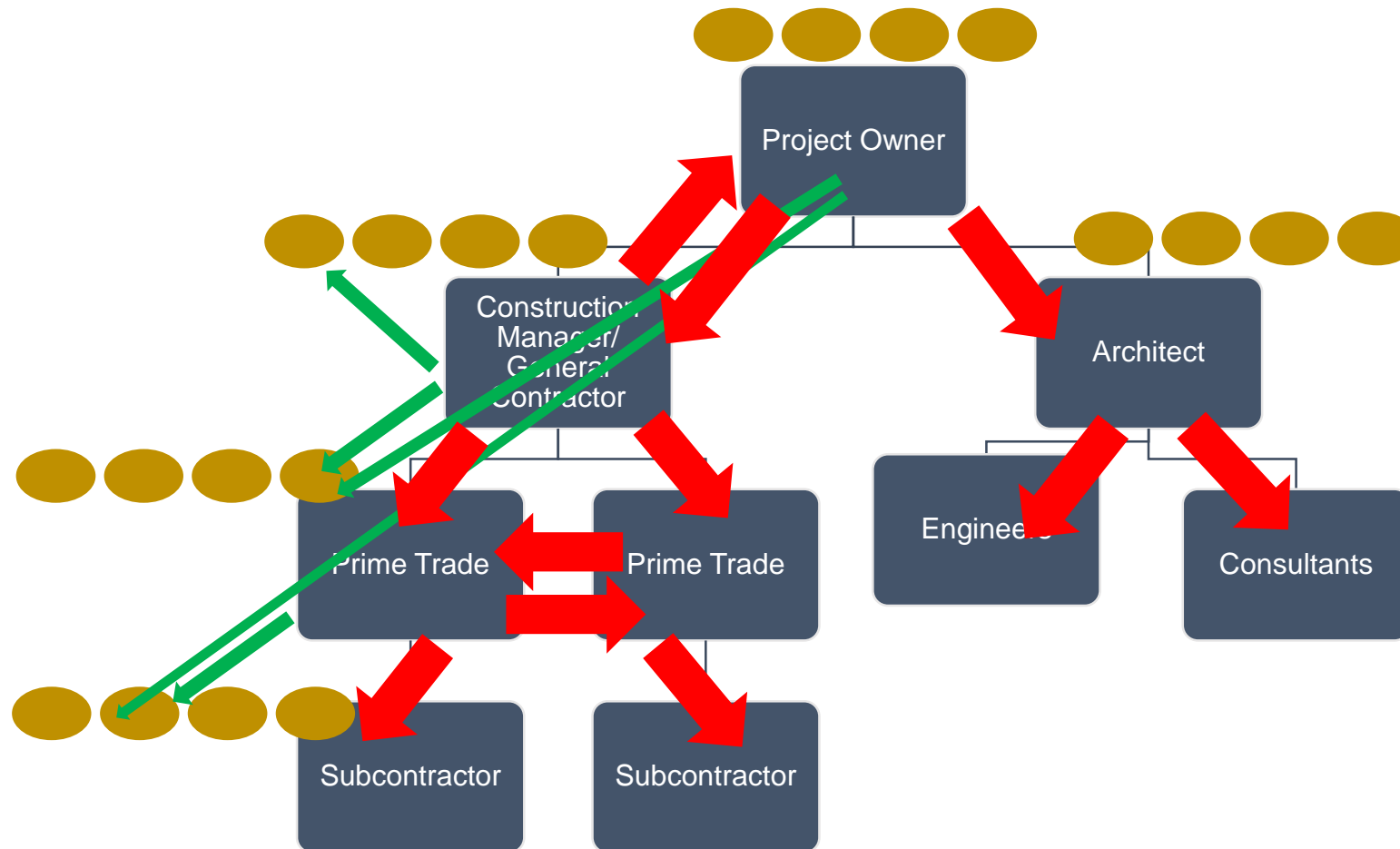
CGL

SDI

Auto

Umbrella

DESIGN BID BUILD



YOUNG
RO

COVERAGE ANALYSIS

Identify key facts to determine which policies apply:

- Who was injured? Who did they work for?
- What is damaged, and who owns it at the time of the loss?
 - Is there any first party coverage?
- What cause or causes of injury/damage seem likely?
 - Which parties may be liable for “damages”?
 - Of those parties, will contractually required coverages apply?

FIRST PARTY COVERAGE

Covers injury or damage to something insured against (worker, or the building under construction) and the claim is made directly to the carrier

- **Commercial Property:** Protects Owner for damage to existing building/structure
- **Builders Risk:** Protects Owner/GC/subs for damage to insured project during construction
- **Workers Compensation:** Provides compensation to injured workers, and limits liability of employer
- **Subguard (SDI):** Indemnifies insured contractor for losses resulting from subcontractor default

THIRD PARTY COVERAGE

Protects INSURED from claim against it by 3rd party

- Named Insured: The entity that procures the policy*
- Additional Insured: Additional party protected as insured under the policy*
- **General Liability (GL):** Covers “bodily injury” and “property damage” claims
- **Commercial Auto:** Protects insured transporting cargo and persons to and around jobsite, and from liability caused by an accident
- **Umbrella/Excess:** Increases the limits available for GL or Auto claims; Umbrella may provide broader coverage for limited circumstances and “drop down.”

OTHER CONSTRUCTION INSURANCE PRODUCTS

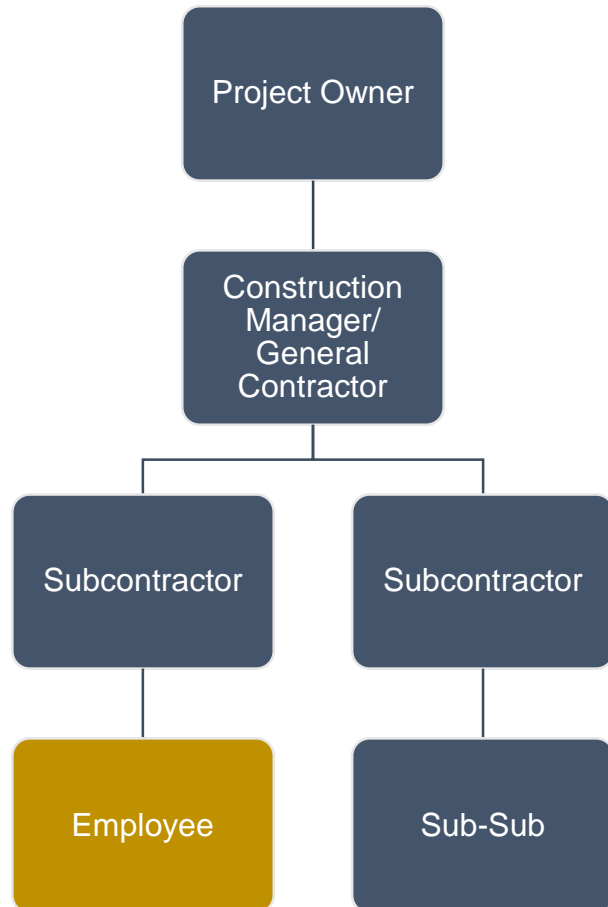
- **Pollution Liability:** Protects against injury or damage caused by Pollution – Excluded under General Liability
 - First and Third Party Coverage for Contractors
 - Typically “Claims Made” coverage which expires when work completed unless tail obtained
- **Professional Liability:** Protects insureds rendering “professional services,” and creates source of recovery for negligence
 - Third Party coverage insuring Design Professionals
 - Likely “Claims Made” coverage
- **“Rip and Tear”:** Protects insured from cost to remove and install defective work
 - Third Party coverage insuring contractors
- **Crisis Management:** Protects contractor for PR and response costs in a publicized event
 - First Party coverage

SCENARIO #1

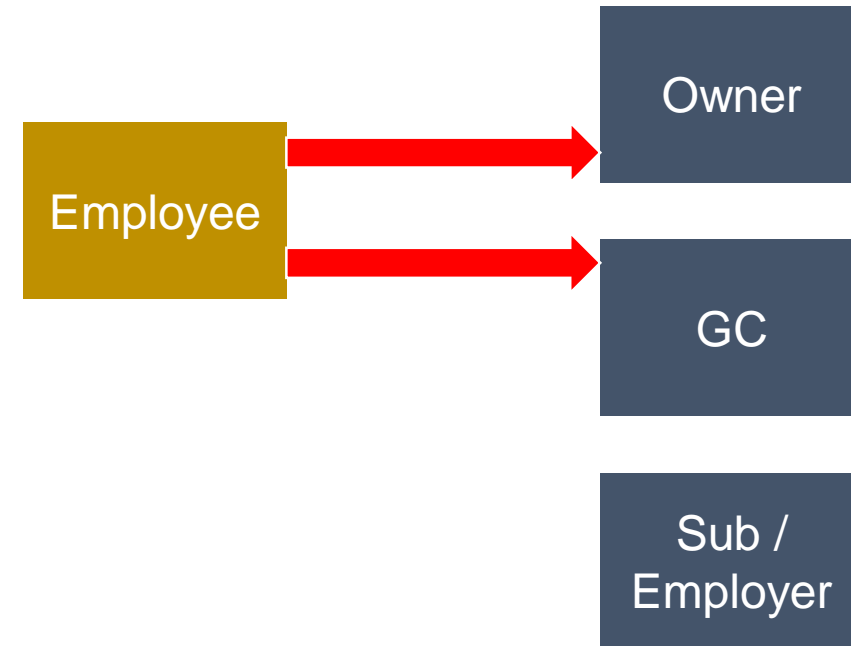
- Serious Bodily Injury occurring on Jobsite
- Six story Steel Structure
- Subcontractor's employee falls from sixth floor; no fall protection
- Scaffolding not installed
- Worker's family files wrongful death suit against Owner and GC



1. AI/BI CLAIM



Litigation:





COVERAGE

- The loss is for “bodily injury”, caused by an “occurrence”
- Subcontractor’s employee was performing work at time of the fall
- Liability of Owner/GC related to work performed by one or more subcontractors
- Each has separate indemnity and additional insured obligations
- Loss impacts excess layers



CONTRACTUAL ISSUES

- Waiver of subrogation/waiver of claims
- Indemnity and insurance provisions

INSURANCE OPTIONS

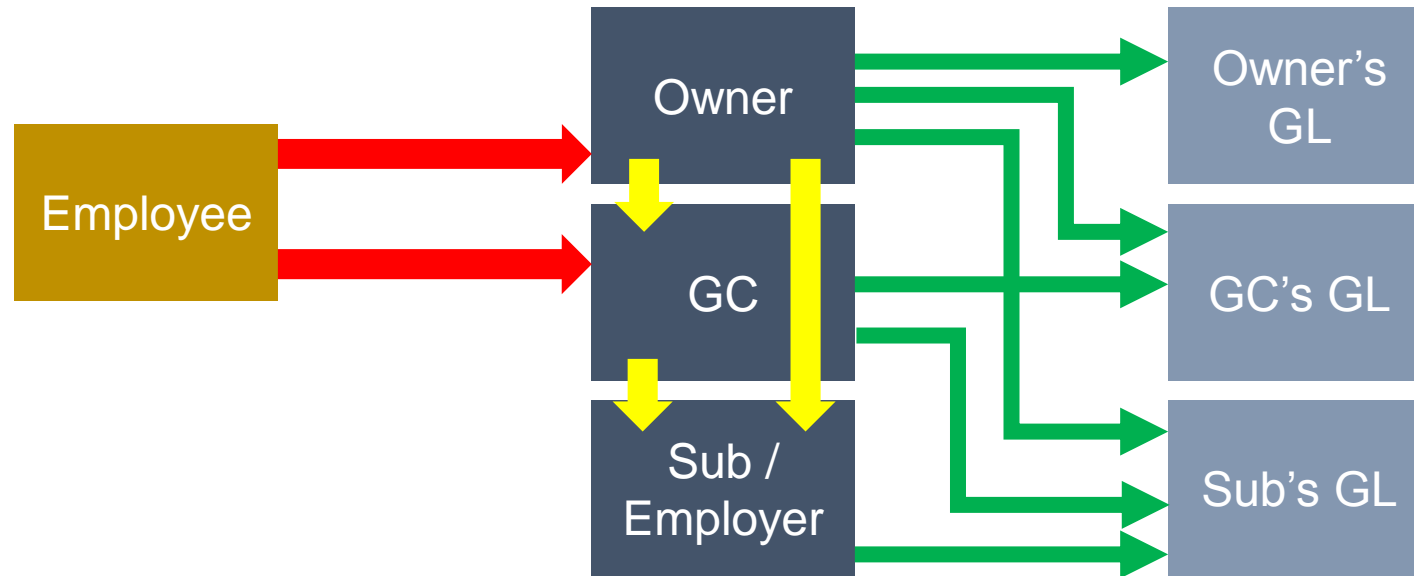
- **Traditional Insurance**

- Each subcontractor must obtain coverage for itself and additional insured coverage for GC/CM/Owner
- Creates issues of allocating loss, and horizontal exhaustion

- **OCIP/CCIP (“Wrap Up”)**

- Single Program covering Owner, GC and enrolled subcontractors.
Different types
 - Workers Compensation and GL
 - GL only
- Creates issues of sufficiency of limits and Separation of Insureds

1. AI/BI CLAIM



SCENARIO #2





DAMAGES

1. Project property damage
2. Project delay costs / subcontractor impact costs
3. Acceleration costs
4. Delays to surrounding projects

RECOVERY/ RISK TRANSFER

1. Subcontractor – Contractual indemnity
2. Builder's Risk
3. Equipment Floater
4. GL
 - Subcontractor
 - GC
5. Professional Liability
 - Subcontractor
 - GC
6. Subcontractor Default Insurance

THE OWNER WEARS TWO HATS

- The Owner (or GC) may be the insured, entitled to seek recovery for the loss under an insurance policy;

And/Or

- The Owner (or GC) may be the claimant, who has suffered a loss and is entitled to pursue damages against subcontractors

The Owner is both simultaneously, so both third and first party coverages need to be explored

WHY FERDINAND DIDN'T FIGHT

- His owner's contract didn't force him to fight
- He didn't insure the contractors
- His owner was the sole adjuster and loss payee
- His owner didn't want to pay the deductible
- He excluded faulty work and design



A GOOD CONTRACT SHOULD

- Require collaboration on the placement of Builder's Risk
- Waive claims to the extent of Builder's Risk Coverage
- Not restrict access to claims submission, adjusting or loss payment
- Match the insurance, and access to insurance, with the risk of loss allocation in the contract
- Require collaboration in the decision to terminate/non-renew Builder's Risk coverage



**There's no
coverage
for DELAY!**



TAKEAWAYS

- Review all relevant contracts and insurance policies, not just COIs
- Beyond CGL, broadly consider other potential coverages that could be implicated e.g. professional, auto, builder's risk, inland marine, SDI, etc.
- Continually assess/re-assess the claim exposure and coverage terms
- Understand interplay between policies
- Identify relevant primary and excess limits
- Consider applicable SIRs/deductibles and what entity is contractually responsible for each
- Distill all considerations in an organized approach to coverage
- Pursue available contractual indemnity rights – do not rely solely on insurance
- Do not blindly accept a carrier's initial coverage denial – analyze the carrier's position and aggressively pursue coverage.