**EPISODE 15 – Tye H. Justice Transcription**

**STORY**

Welcome back to the ***Your Project Shepherd Construction Podcast***. In our last episode, Brian and Heather had been living in their home for about a year and a half when they noticed some doors and windows leaking after heavy storms. James, their owner's rep, referred them to a home maintenance and handyman company to come replace some caulking and do some repairs around the home.

While checking out those issues, the project manager for the handyman service noticed some cracks in the brick. He also pointed out separations and a siding and drywall cracks inside the house. He suggests this may be a more serious structural issue and recommends they talk to a foundation repair company and a structural engineer. “Brian,” Heather said, “this time, let's call James first, I don't want to try and go it alone over a structural issue.”

“Agreed,” Brian said, “This really has me worried and I don't want to handle this the wrong way or the cheap way this time.” They put in a call to James to explain the situation. James doesn't think the foundation company referred by the handyman as necessary at this point because the engineer first needs to get to the root of the problem and as luck would have it, it turns out the engineering company on the business card that Bruce gave them is the same one that gave them the high price when Eric solicited proposals two years ago. It's the same one that James likes to work with. They wonder if all this would have happened if they'd just gone with a better, although slightly more expensive engineer from the get-go.

"Hey, James, thanks for getting everyone together so fast," Brian said. "No problem," James said. "We're going to get it figured out." Brian James and the engineer whose name is Phillip walk the perimeter of the house together and it doesn't take long to spot what is likely the source of the issues. "Well, I think I can already tell you what's causing your foundation problem," Phillip said.

He points out water ponding against the side of the house and some discoloration on the brick. "There should be a drainage system on this property, preferably tied into the roof gutters or very at the very least, a swale should be cut here to direct water away from the foundation. This is almost flat or maybe even sloping toward the house," Phillip points out, "and the level of the soil is up to the poles on your bridge. I'm surprised that you don't have water on the inside of the house. In addition to the foundation issues.”

Brian said, “What's a swale?”

Phillip explained how a swale is essentially a slight ditch, which is used to take water from one area to another, and in this case from the back yard and the sides of the house down to the street.

"Oh, okay," Brian says sheepishly. James suggests that once they get the reports and the quotes back, they notified Derek's insurance carrier. Even though Derek is out of business, his policy might still pay out on something like this. But something is nagging in James's mind about the situation. He decides to go back to his office and check his records from the build.

The next day, Brian's phone buzzes. It's James. James informs Brian that he checked his photos of the job site from when he did his punch list walkthrough with Brian, Heather and Derek. “Well,” James starts, “I hate to tell you this, but we can go ahead and cancel that call with the insurance company. When I was there yesterday, I swore I remembered seeing some proper drainage around that slab, and even though it was nearly two years ago now, I knew I talked to Derek about the importance of that. So I checked my records and in those photos, you can clearly see there were swales on each side of the house and you can see over six inches of that foundation showing."

Brian pauses and mumbles, "Yeah, well, I guess that's my fault."

"Why?" James asked. "Did you bring all those dirt in?"

"Well, yeah it seemed really low on the sides of the house, and our dog kept tracking mud in, so me and my dad hauled in some dirt and built it up. I've never lived in a house before where there are these, like, miniature ditches on both sides of the house. I just thought it was something the city made us do. I didn't know it would cause problems."

Unfortunately, Derek's insurance company is not going to pay for repairs. It was caused by a change the homeowner made and it's nobody's fault this time, but Brian's at a cost of over $20,000. They end up paying for the needed foundation repairs, grating some dirt away from the slab, and installing an underground drainage system to avoid having to haul all that dirt away and recut the swales.

Another very expensive lesson learned.

**INTERVIEW**

**Curtis:** Welcome back to ***The Your Project Shepherd Construction*** podcast. As always, I'm your **host Curtis Lawson**, from **Shepherd Construction Advisors**. And as you've heard us say before we teach that there are four key components to any successful construction project, and that is illustrated by a simple child's drawing of a house. The foundation is planning the left wall is your team, the right walls is communication, and the roof protecting it all is proper execution.

Today, my guest is my friend and my insurance agent as well. **Tye Justice.**

Tye, thanks for joining us.

**Tye:** You bet. Glad to be here.

**Curtis:** Tye is with Hotchkiss Insurance, and you've been there a long time like 20-something years is that right?

**Tye:** About 20 years well joined in 22,003.

**Curtis:** All right. Dan Hotchkiss is a commercial insurance brokerage. You guys specialize in insurance for residential construction. Is that right?

**Tye:** We have a deep expertise in residential construction, the whole part of our organization is dedicated to that, but we do everything construction, real estate, private schools - we're a full commercial insurance agency.

**Curtis:** Okay, great. Well, as you know, as we talked about, one of the things that we focus on in this show is kind of the right way to go about a construction project. Our goal is to teach people kind of the right process, so they don't get in trouble. we also along the way, try to make sense of anecdotes and some horror stories, and real-life examples of things that have gone wrong. You know, and you had some issues on a project that that you did for yourself, and I was involved a little bit and helped out at the end. I don't want to go into details on it but it was not nearly as bad as our fictional Brian and Heather's story that we've told, but I hope you don't mind if we could talk a little bit about that. Maybe tell me, you know, where did things go wrong and your project again, we're not going to name names, because you know, Houston is a very small, very small, big town, but just kind of talk about maybe how things went wrong or what could have done better.

**Tye:** Yeah, so I mean, in the, with the gift of retrospect, we look back on that project, and I think where we had struggles were that we had a team in place, and we lost a key member of that team. That was a project superintendent and the replacement or replacements that came in really struggled to pick up where that individual left off. The expertise of that project manager didn't equate to what was there before and it was probably the first time you really truly understand how important a project manager and the project management process are to an entire overall construction project. There are so many details that are handled by someone behind the scenes that even you as the homeowner don't have any idea that they take care of or that they're executing on. We felt that when we lost that key person, and then the replacement had trouble catching up to speed and probably wasn't as proficient at that role as they should have been.

**Curtis:** Yeah, sometimes I think information tends to just be a ‘live-inside-one-person's’ head.

**Tye:** Yeah

**Curtis:** And, you know, when a company relies on one person that kind of carry that load, it's dangerous sometimes because you know, you never know somebody's going to quit, move, pass away, whatever. And when all that information is just stuck in somebody's head, and so what happens is that person you know, you're in trouble with the project is in trouble. So, you know, part of one of the things I just talked about and kind of our, our, our illustration of the of a good project, one of those is communication. And part of that is having like some of the right technology in place to help manage that. So, you know, we always encourage people to use project management software, that kind of tracks, hey, here's, here's how we're doing everything. You know, here are all the specifications. Here's the history of everything that's happened. And that way if that key person goes away, it's much easier to kind of slide the new person in or at least you know, cover so those weaknesses don't become apparent. So yeah, well, I'm glad that you got through that.

**Tye:** Yeah, thank you, Curtis. Curtis came to the rescue and save that project because it was causing some stress levels to rise.

**Curtis:** Yeah, well, I'm glad that I can help, and you know, it turned out nice. And I know that you guys have been there for a couple of years now and have been enjoying it. All right, well, so we'll move into our insurance topic.
Let's see here. Sorry, I got to scroll through a couple of notes here. So, insurance, kind of falls under several of those categories. And that illustration, you know, should be part of the planning process, because you need to involve the insurance team before the project starts. Make sure that you have the right kind of coverage in place. And then you are part of the team and then there's some ongoing communication that happens as well back and forth. And then, you know, kind of that last step of execution and kind of long-term protection. You know, that's part of it, too. I think a lot of builders and homeowners probably don't spend a whole lot of time thinking about insurance on their projects. I know in the past, I haven't to kind of change my mind set on that. But you know, the M.O. is usually hey, let's just make sure the bare minimum is in place. Let's make sure that we got a certificate to send to the city and central bank and you know, other than that, I'm just shopping for the cheapest price, you know, not to worry about it. So, do you think that's a fair statement? Do you think that's what most builders do?

**Tye:** I think that's where a lot of builders start and I think once you've been through a scenario where you actually have to use the insurance or you've been close to one or hurt one from, you know, a fellow builder, you start to understand the importance of that and why buying the right insurance and you're right planning for upfront as you walk through the project is so vital. Also, that all the different parties are talking from the bank to the builder. If the homeowner is involved in the procurement of insurance that they're talking to either your agent or their agent and everybody's on the same page because there can be some nuances, specifically remodels, that can get everybody in trouble. If everybody's not on the same page.

**Curtis:** Tell people who are listening who may not be familiar with the process, what types of insurance are generally carried on a custom home project.

**Tye:** So very typically a home builder and you alluded to it with hey, how do we get our certificates that's one of the I mean, how do we get our permits, that's one of the main things that are builders worried about but a general liability policy, which is at its very core, a general liability policy protects the builder and it can protect the homeowner if there's a contractual obligation to do so, for bodily injury or property damage as a result of your construction operations. Very simple definition, that can have a whole lot of things change and go on that can trigger the policy. So general liability, builders’ risk - which is a term you've heard which if you look at the simplest term - builders’ risk is covering the vertical construction, the actual sticks, and bricks of your home during the course of construction. This is not a homeowner's policy; it is specific to the construction period. So, a builder's risk policy can be for a specific duration, or a specific value and it is only built for a construction project and then depending on the sophistication of the builder, workers comp can come into play. There can be a commercial auto policy, but also a commercial umbrella policy which is just added liability protection over and above your GL work comp and auto. Yeah, Texas doesn't require workers comp Some states require that right? I would take it a step further. Texas is the only state in all 50 that it is not legally required. Well, the only so every other state you have to carry comp, but in Texas, if you are not contractually required to carry it, you don't have to carry it now. It is a wise coverage, It's not terribly expensive, but it is a very wise coverage to carry for a builder.

**Curtis:** Yeah, I mean, I think you know, for us, maybe $2000, or $3,000 or $4,000 a year it's pretty reasonable. It actually was some of the carriers like the one that was with Texas Mutual, they give us a dividend at the end of the year.

**Tye:** Yes, a dividend. It's a dividend.

**Curtis:** So yeah, it's a good program. And I definitely, you know, that's one of those things when I was a young builder, I didn't carry it because I don't want to spend that money. I am not going to do it

**Tye:** Right. But now, again, it just takes one in one accident and you're when you're paying for a medical bill out of pocket or lost wages out of pocket. You're like, Well, that was silly that I didn’t carry that.

**Curtis:** Exactly, so out of those policies that you mentioned, which of those should the builder carry, and which should the homeowner carry, or should it all be the builder, and isn't any overlap?

**Tye:** In a perfect world? I'll answer to in a perfect world, probably the builder should carry it now.
A homeowner can't really buy general liability because it's more entity oriented. A homeowner can buy a builder's risk it is just not the cleanest way to do it. It's fine to do it. But you want to if that happens, you want to be probably listed as a loss payee on the policy because at the end of the day, whoever's name the policies issued to them they're the ones that a check would come to if there was a claim. Yeah. And so a lot of times a builder can get ahead of a homeowner on expenses and y'all are catching up with progress billing or installments however you're doing it. So, the builder’s risk is where homeowners tend to want to stick into the middle of the process that we want to carry it so they can do it, most builders are the ones that procure it because they have the relationships, they know who to go to get the right policy and go get the best cost structure of the whole thing so it.

**Curtis:** So, does the builder’s policy cover the homeowner and vice versa? If the homeowner is carrying something, does it cover the builder or does it just depend?

**Tye:** So, the builder’s policy can cover the homeowner from if the if there's a cost. So, let's talk about two things. There's general liability, which again, remember it's the protection from bodily injury or property damage as a result of your operations. So, let's just say you're on let's say that you're on a project and you hit the fiber optic cable. Right AT&T sends you a bill saying you damage the fiber optic cable. They may, because it's on the homeowner’s lot, they may bring the homeowner into it. If the homeowner is listed as an additional insured on the builder’s policy. coverage would protect the homeowner without the additional insured, there's no automatic coverage. There are still ways to get it. We won't get into that in detail, but automatic coverage is provided that way. Builder’s risk is the same way if the homeowner is listed as a loss payee, you could have them get the check where the check would be issued to both the homeowner and the builder. But it's very rare that the coverage flows upstream from the homeowner to the builder. Yeah, it would have to the only time that may happen is through a course of construction policy, but it's so rare.

**Curtis:** So, let's assume that the builder is doing what he should do, and he or she, and they've got all those policies in place themselves. Is there anything that the homeowner should, or could as an option carry themselves for additional protection for themselves?

**Tye:** So, if they're living in a temporary housing situation, and they've got a homeowner's policy, they could ask their agent to extend liability to the new location. It could provide some protection, but it doesn't. It doesn't do what they it's not like a GL policy for a builder. So really, when you're in a construction environment, the insurance that's required, whether it's there's no homeowners really in a new home policy and everybody you know, we get people from time to time said Oh, my homeowner's will cover that. Well. Most homeowners’ carriers unless there's a couple like there's a carrier called Pure that does, of course, have a construction policy that will allow a policy to roll from construction straight into a homeowner's policy, but most homeowners carriers say if you're under construction, we're out. You need to go by a builder's risk policy. They're very specific on that.

**Curtis:** Gotcha. So, in our fictional story about Brian and Heather, you know, they bought this lot had had a house on it, and they bought that house with just a conventional mortgage. They just got a regular old homeowner's policy when they bought the house because that's what they thought you should do, right? Nothing related to construction. And the house was in really bad condition, and they went to tear it down themselves before they hired a builder. So obviously, they made a lot of mistakes there, but what kind of risk do they put themselves in by doing all that well?

**Tye:** So, there they would have no protection for the home. Obviously, if they're going to tear it down and build a brand-new house, that may not matter, but if someone got hurt on the on in the home during that time, that's the bodily injury portion of their homeowner’s policy if it's a construction site is probably not going to step in and pick that up.

**Curtis:** Yeah, it's a vacant home that flooded and there's just been sitting there for a few years, and they had no intention of living in it. Right.

**Tye:** Right.

**Curtis:** So, like a normal policy doesn't cover a vacant house?

**Tye:** No, no and you would have to buy specific there is a policy in the homeowner’s world that's a vacant dwelling, that may if they put a loan on it, they may have to take that out just to get the loan but ultimately, that could be canceled and terminated when the builder tears the house down and a builder's risk would take over at that point.

**Curtis:** Yeah. So they put themselves at a lot of risks that they didn't realize just by making those few decisions.
So we touched on this already, but why is it important to work with a company like Hotchkiss and somebody like you who specializes or has a strong specialization in construction insurance?

**Tye:** I mean, it's the things that come to mind are an expertise. So, we've seen all the most things that can happen and we know what the outcomes can be. So, we've got best practices we know who the right carriers are. We know what the cost structure should be we can provide advice and counsel because we've seen all the stubbed toes if you will, so we know what can come up. But you know, you kind of liken it. You know if you're going to if you had a foot problem, and you said hey, I know this e and t, I'm going to go to him. He could probably get you 75% of the way there but when it gets down to the real nitty gritty, right? The foot doctor might not be the right guy and vice versa in the end right

**Curtis:** Or the OBGYN.

**Tye:** Well, I wasn't going to go there ha-ha

**Curtis:** Yeah.

**Tye:** But yeah, I mean, they can get you 75% there but it's the deep details that can come up and get you in, you know, Murphy's laws if it can get you the one thing that you didn't think of that's what will bite you.

**Curtis:** Right, what are, what are mistakes that a lot of builders make? I mean, is it being underinsured, or having the wrong policies, what are some common builder mistakes?

**Tye:** So, I would say yeah, that's a great question. Most builders know the steps to take and so it's execution on the steps whether it's, let's follow through and actually sign a subcontract agreement or sign an agreement with the homeowner right so let's start with that relationship with the homeowner to I mean, the worst thing you can do is say hey, let's all agree on this and let's just get started. Hey, start builder go. Right. I will get around to the paperwork.

If it's not written down, it never happened, a good lawyer told me one time. Yeah. And so, execution of the actual paperwork, take the time to do it have both parties, review it, talk about it, understand what the details of it are, and executed it upfront. The other thing is the place where we see issues with just the execution of the subcontract management from the insurance standpoint, so I'm speaking very selfishly from the insurance side of the fence. So the best thing a builder can do is hire good subs that have their own insurance. It's, it's good for a bunch of reasons. One is it makes your insurance more cost-effective. Number two, it protects you because, at the end of the day, you're just I like to use the term you're the choir director. Yeah, exactly. You're orchestrating and making the music but you're not doing the work. You're not swinging the hammers hanging the drywall, or digging the ditches?

**Curtis:** Yep.

**Tye:** And so why do you want your insurance to jump up and down and pay for everything when the guy that actually doing the work? Should be responsible for his own work? So, some of the stuff that can bite you is where you're not executing on the sub certificate tracking, making sure they're buying the right insurance, making sure they're listing use the builder as an additional insured because you would want them to step in and protect you when they're the ones that actually do it. So, the same, the same endorsement that you can provide to a homeowner through your policy. The subcontractor can provide it to you through their policy. So as the old saying goes, ‘the poo kind of flows downhill’, right? Want it to flow downhill and only get to you ultimately your homeowner unless there's no other place that it can go?

**Curtis:** Yeah, yeah, if it backs up and it's tickling your toes. There's a real issue.

**Tye:** That's right.

**Curtis:** Yeah and that's a great segue because my next question was actually about subcontractors and, you know, should they all have their own insurance? So, you know, the answer is yes, they should all have their own insurance. If they don't, if it's a sub what you know, here in Houston, especially, we get a lot of people who are working on construction sites who are maybe questionable legal status for work, let's say and a lot of those guys, they're not sophisticated, they don't have their own insurance and might not have a tax ID number. So how does that work? If you've got subs that are not insured that don't, you know, that are like that. How does that work if something surely happens?

**Tye:**  So yeah. And so the textbook answer is what you stated when we started this part of the conversation - that it is best practice for every sub to have insurance. Is that reality? Probably not.

**Curtis:** Right.

**Tye:** And there may be subs that you're like, this guy's the best painter or the best trim carpenter in town, but he can't buy insurance for X, Y, or Z reason, and or he doesn't have the sophistication to do it, but I want to use him. So, is that a problem? It's not a problem. You just have to understand what you're getting into. So, if any, and another portion on this conversation is a sub can buy insurance at one time, and then they may not make a payment and that policy cancel lapse and you don't even know it because you have no way of knowing. So, in that situation, we'll use both of those – right - never bought it and it canceled, right? Same situation. Ultimately, there are now without insurance. So, you have a subcontract agreement that has indemnity and all that stuff. Well, if they're not able to pay insurance building probably doesn’t have enough to enforce an indemnity agreement.

**Curtis:** Right.

**Tye:** So, then you're back to its coming back. That's where your insurance would step in. At that point. You're the backstop. Unfortunately, now you can use those uninsured subs. Your policy does nothing for them, but if they damage property, or someone's body covered me, it covers you. Yeah. And the homeowners, they're listed as additional insured on your policy.

**Curtis:** Yeah, that's great. You know, when again, when I was younger and dumber, now I'm just old and dumb, but when I was young and dumb, I probably had you know, 60% of the guys who didn't have their own insurance and it was all on me. But, you know, we've kind of flip flop that now to where I might have one guy, maybe, but you know, one of our rules is, if we're hiring a new sub, we get an insurance certificate, we get a signed subcontractor agreement, and otherwise we're not working with you.

**Tye:** That's right.

**Curtis:** You know, that's one of those things that can add cost to the project because let's face it, the guys who aren't insured who are not sophisticated, they're generally cheaper guys. They might do great work. But that's, that's, that's what you get. And so you know, as you kind of move up the experience, ladder, whatever, you start to use more of those subs, with, you know, licenses, insurance real office employees, it's going to cost more. But at the end of the day, it's better for everybody. It's better for me as the builder it's better for the homeowner it's better for the insurance. It's better for everybody,

**Tye:** Everybody.

**Curtis:** Yeah, so it's I think that should be all builders’ goal

**Tye:** Well, the industry has honestly almost trained out most use of someone without insurance because I mean, it's an industry-wide push to have everyone actually buys their own coverage. Yeah and so it's beneficial to you because it lowers your cost of insurance. Yeah, but, you know, in a small subcontractor, it's really not that expensive and I can promise you, if he works for other builders, you're not the only one asking for it and that's where people he's like, Oh, these the sub will push back on me and say they don't you know, nobody else is asking me that's not actually true.

**Curtis:** You’ll have a hard time finding work in this town…

So I want to run a couple of kind of what-if scenarios by you will play insurance, what else? And you told me, in your experience, kind of how insurance would normally react in these types of situations. I know every job and every policy could be a little bit different. So these are just kind of broad generalizations. So let's say a nosy neighbor walks onto a job site and this happens all the time, by the way. I've been that neighbor. I've walked onto people's job sites in the neighborhood just to check out what's going on. So it happens daily. So you know, we have nosy Nancy, who is walking around the job site one night with her dog, and she steps on a nail - it goes through her foot, she has got to go to the hospital, or maybe she falls off the porch, whatever. She's hurt. So what happens there?

**Tye:** Well, it depends on Nosy Nancy. It depends on her next step. So there's not well, we're not going to go into that there is a no-fault coverage of like $5,000 on most GL policies that says hey, this person was hurt on my side. I want to trigger the no-fault coverage just to take care of it. That's very rarely used. But if nosy Nancy comes on and says, oh, well, he didn't provide a safe workplace and I walked nosily onto this job site and I got hurt and I think he's that he's been negligent to me and now I've suffered bodily injury. And I'm going to hire an ambulance-chasing attorney and sue you, your policy could defend you. We got to what triggers a GL policy you got to got to get inside the walls within the occurrence. Just because she got hurt doesn't mean that there was an occurrence, and it doesn't mean you are negligent. Now if she tries to trigger it saying you were negligent and not providing a safe workplace, you didn't properly have it fenced off and they go cite all these OSHA things that said, Oh, you're at fault. Your policy could defend you at that point. Yeah, depending on all the circumstances but yeah, that's how those things work. And we've had I mean, we, Curtis, we have seen that the gray hair on my head has come from the calls I get that literally my first words are “You got to start over and how did that happen?” I mean, we've had a situation one time where an owner walked into a home late at night to check on the job and didn't know that the brick mason was still milling around upstairs, picked up something that was upstairs a hammer, and just tossed it downstairs thinking he was going to pick it up later. The guy walked right under it and hits him in the head oh man, you got to work comp claim on an on a site right well just crazy stuff like that. You're like, how's the math of that actually work?

**Curtis:** What are the odds?

**Tye:** What are the odds?

**Curtis:** All right, so next one, and I've actually had this happen to me. So like all the windows on a job get delivered to the house, the window company drops them off in the garage on a Friday afternoon. Monday morning, the super rolls around, doing his rounds in the morning. Hey, you're gone. Where are all the windows? Yeah, yeah, I've had this happen. So who covers and do you know what happens there?

**Tye:** Sure. So this happens so frequently. There have been times in our claim taking days that we're convinced that the drivers are on like they're on a take, right? Yeah, they're like, hey, I just dropped off over it, you know, 123 Curtis street or something? Yeah. Because you can't time it any better. But part of a builder's risk policy covers theft, for vandalism. If a tornado rolls through while you're under construction and rips the framing down.
The only thing really that's not covered in builder's risk most typically is flooding. You can get it with certain carriers as easily as separate as a separate policy. Yeah, but if you think of it everything construction related, I mean, we've had we all remember, copper is expensive and valuable, right so you'll come in and copper lines will be ripped. out of the house. So when it's under construction, we've had the appliances get dropped in the garage, you come back on Monday and the entire appliance package is gone the same afternoon, probably by the afternoon, right, right? I mean, it's just crazy. So but those things are covered under builders’ risk even so far as let's say you're building a high-end custom home and they've got some expensive European floors that they've shipped in and they're storing them off-site because they're so valuable and something happens in the off-site. The right builder’s risk policy can actually have coverage for off-site materials that will be installed in the house eventually but another Yeah. And even there is again, this is what this is the nuanced stuff that goes into the expert will get him right. So there's even on some of the builder's risk policies you can get transit limits for materials in transit to the job site that are yet to be

**Curtis:** Oh, well. I need to check my policy and see if that's online.

**Tye:** I can sell you one.

**Curtis:** Okay. I bet. Yeah. I mean, we, you know, we store materials here and we have other vendors that yeah, we'll get 4000 square feet of wood flooring, and we have nowhere to put it so, hey, keep it at your warehouse right now.

**Tye:** Right

**Curtis:** Yes, that's great. All right. So after the project is over, people move into their houses. They've got a water pipe, or a water fitting that breaks or comes loose water sprays everywhere, ruins the drywall ruins the wood floor, right? And this is like two years after they moved into the house, right? Is there any coverage still there?

**Tye:** Yes. So possibly. So it depends. Everything depends on the occurrence and what caused it right. So if it's because this four-year-old was playing, you know, shoot them up in the house and chase nearby around and they knocked off the fitting and it broke that's not it.

**Curtis:** But if it was something inside the ceiling?

**Tye:** If the fitting part was installed improperly, right? And so it pops, and floods and you have all the damage. If the investigation shows that here's the way that would typically happen. Most of the time, the homeowner will because they want to get it handled quickly. They'll call their homeowners carrier at that point builders to risk out homeowners in or live in their homeowner’s camera company will come to pay the claim, though. They'll do all the remediation that repairs they'll probably do an investigation. In that investigation, they say this fitting was installed improperly by the plumber. Yep, we're going to pay the claim. But there's a term in insurance called subrogation. We're going to subrogate which basically means we're going to go sue, who we think is the responsible party to get our money back, right? That's one way it happens. Depending on the obviousness I mean, if you can tell from the get-go, the homeowner’s carrier may start with this subcontractor that did it or the builder. I mean, you'll get the builder gets a lot of darts in the process. Unfortunately, you do it all. So you get to you get you probably get on the first end of those calls. You're getting one or two and the first one

**Curtis:** Yeah, I mean, a lot of clients would call the billing if they've lived in the house for a few months to a year so they might even call the builder first before they call their insurance company for sure. Yeah, these pipes leak and come out. Yeah, helped me. Stop it or turn it off. And then they're like, Hey, your insurance covers this, right?

**Tye:** Yeah. Yeah. We call that insurance amnesia. Everybody forgets how it works whenever something really bad happens, but again, depends on and that's in the insurance world. We call that completed operations. So you have ongoing operations while you're on site. But you have completed operations for jobs that you've done in Texas, okay this is probably don't want to go to this level of detail. But in Texas, there's a stint 10-year statute of repose. So you conceivably could get drug into anything. If it was shown up as a completed operations issue for up to 10 years after you build.

**Curtis:** Fantastic love to hear that.

**Tye:** You can edit that out if you don't want to hear.

**Curtis:** Not too worried about it. So kind of a similar question. You know, this is maybe a little bit more long term, but you know, like our builder's warranty has a 10-year structural component to it. So, if you got a foundation failure or structural framing failure within 10 years that falls on me, right?

**Tye:** That's right.

**Curtis:** Is there any insurance coverage that's going to help with that? Let's say five years from now they're going to crack on their foundation or their ceiling sagging majorly, or something like that. And they and they call the builder.

**Tye:** So here, here's an important distinction on insurance versus warranty. Okay, an insurance policy is not a warranty for poor workmanship, right? So, if now the poor workmanship causes subsequent damage, we'll just use the simple example we were just using the poor workmanship of the plumber that installed the part incorrectly it can be a $1 fitting that pops and causes $100,000 It's not going to fix the $8 part. But $100,000 worth of drywall, and flooring, right? Subflooring, whatever. That would be picked up by a GOP about general liability policy most likely. If you have a poor frame job if your GL policy is not picking up poor, poor workmanship. Yeah, it's not a warranty for workmanship.

**Curtis:** Even if it's like hey, your concrete guy did something wrong. You know, I can't make up a scenario right now that your concrete guy did something wrong when he was born in this lab, he could fall back on him?

**Tye:** It could because at that point again, it's not going to fix the slab but if the slab then falls off on the side of the house and the rest of the house is damaged, and they come back and sue the builder you could have subsequent damage after the failure of the slab, not the slab again. It's never going to fix the faulty work that caused it but the subsequent damage after that. Does that make sense?

**Curtis:** Yeah. Okay, man, there are a lot of ways to get sued out there.

**Tye:** There are many constructions it is hard right this goes back to why we started this is why you want the right team, the right communication, all the right parts, and pieces together because it is complicated.

**Curtis:** Yeah. I mean, there are a million ways to get sued on a construction project. So this is a shift a little bit. Is there anything that builders and homeowners can do, and that's related to the cost of policies? Is there anything that builders and homeowners can do to control costs or help protect themselves, for example, putting up job site security cameras, you know, fencing, posting signs, all those sorts of things?

**Tye:** All those things do matter, and so they're in depending on the size of the project, I mean, we've had, and we all know in Houston, some really beautiful homes have large values. So some of those larger homes, a carrier can put what's called a warrant in there and it's a warrant in the policy that warrants that you will do certain things to protect the job site, because there's such a high risk of theft and you think about it I mean, an insurance carrier, you know, on an I don't know we'll do a million dollar house let's just say it's for their guaranteeing are willing to pay, right a million dollar check for $4000 or $5,000 in premium right. So, it doesn't, doesn't take a genius to figure out if you have too many of those million-dollar claims. They're upside down in a hurry. So, the mitigating steps you take sometimes those mitigating steps are the linchpin, even whether or not a carrier will offer a quote. Now, that's not always the case. But yes, those things do matter. Long term they can, they can bring down the cost and they definitely give you a reason to not increase the cost. If there's ever if there's a reason to increase. It's like I don't want to do any of those safety steps. Well, we may charge more premiums. If you're not willing to do that.

**Curtis:** I would guess that sometimes that makes it more defensible to the right so like if somebody tries to sue you, but you've got cameras that capture what really happened or if you've got a sign saying danger construction site, do not enter at your own risk and then nosey Nancy rolls in there you have some layers of protection that are going to help you with…

**Tye:** Some of the things you cited, I mean, you'll see it now in Houston more and more is construction fences around the whole project that is locked every night, right? I mean years ago; you could Nosey Nancy didn't have to even try she could just walk the dog and take the dog in the house because there was no barrier of entry. Now that construction fence there, she's Pete peeking through the, you know, the two posts trying to see what's going on. And if somebody forgets to unlock it, she can get in there. So that matters, right? But that's, again, that's an additional cost that goes into your ultimate project. Lighting. I mean, depending on where it is we've had carriers that require diesel-generated or solar-generated lighting at night to light up a site. So yeah, those things are cameras there. I mean, they've got these entire enclosed units that you can put on a site. It's got cameras, lights, alarms that will go off if somebody comes in it'll ring somebody – the level of sophistication of the security is pretty impressive.

**Curtis:** That stuff has really come down and cost so much to wear, I don't know why you wouldn't do a lot of it. I mean, we just added it as a budget line item. All of our budgets we just said we're always going to do this from now on right? I mean the security fence for let's say it's a 12 to 16-month construction, construction project, that security fence to rent it maybe $2,000 on a couple of million-dollar projects. I mean, who cares?

**Tye:** Right

**Curtis:** Right, so, I mean, in the cameras, I mean, those things have gotten super cheap.

**Tye:** Even if they're dummy cameras I think they're real and we put them up. I've never done that. Yeah.

**Curtis:** All right, cool. So we're going to wrap up, I guess or the insurance discussion here and well kind of and ask you some questions that I like to ask all of our guests I like to hear these different answers from different perspectives. So, from an insurance perspective, tell me about like your ideal clients.

**Tye:** Wow.

**Curtis:** Well, let me say it for you. This is two parts. You don't really work with homeowners very much, but from the builder side and the homeowner side, both sides. What's the kind of the ideal client?

**Tye:** Yeah, so Okay, let me answer it from the builder side first. So, first of all, just someone that will listen to best practices and be willing to change their operation a little bit. So, I mean, it's, you know, when I first got in the business 20 years ago, right, so this idea of using a subcontract agreement, right, I would go meet with a builder. He's like, oh, we don't do sub count. I'm not taking the time, right? And he's like, I got it, why not? He's like, I don't need to do that. I want to do that. Right. I was like,

**Curtis:** I've never done it that way.

**Tye:** I've never done it that way. These guys aren't going to sign I don't have time to do that. But you know, and I would always come and say, hey, did you always carry a cell phone? He's like, no, I was like, well, you're so times change, and these things happen. I go. You can't understand how bad a situation can get till you've been sued.

**Curtis:** Right

**Tye:** And again, if it's not written, and the roles and responsibilities of a sub agreement are not in place, it's just the wild wild west. So, you can say that we said you're going to take care of this all day long. But I can tell you insurance amnesia shows up or construction amnesia shows up like I never said that. I don't know what I'm talking about right? Yeah. And so really the ideal customer is when they are willing to amend and adopt some best practices. And those best practices, they're not hard. They just take the effort to do it. And really, you do it once, and the system is set up and again, you don't get to test this stuff until you actually have the event. I've been on the other side of that so many times, they're like, thank goodness, we took the time upfront because everything when it works, it's like a song. Everything works right. The paperwork is in place. Everything the attorneys asked for everything that needs to be available is available when it doesn't work. It's just it's clunky, and it's the wild wild west. Yeah.
Yeah, that's it.

**Curtis:** How about from the homeowner’s side?

**Tye:** I mean, yeah, I mean, the homeowner side it's, it's a bit easier. Homeowners are more, you know, a construction project. You don't do them all the time. Unless you kind of has a sick addiction like my wife and I do where we've done, I think we've done eight but most homeowners it's a one or two-time thanks so they haven't stepped through that so they're more willing to listen, but you know, they just to understand the process to understand what a builder's risk policy is. To you know, just that they'll listen and take the good advice of somebody that's been that's done it a bunch of times.

**Curtis:** Yep. Having the right team in place. Totally. Yeah, and not to go backward here, but those subcontractor agreements that you mentioned, you know, and, and saying, you know, builders, old school builders, saying, “Yeah, we don't, we've never done that we are not going to do it, you know, or they'll never sign that.” I've heard that so many times. And what they don't think about is that you know, as the builder or as the person writing the check, you have the power to control that.

**Tye:** Absolutely.

**Curtis:** I mean, all you I mean, this is what we do. We say, hey, your checks ready on Friday, but you're not going to get it in your hand until we have this signed agreement in our hand.

**Tye:** That's right.

**Curtis:** And by the way, your insurance expires next month. Be sure you have that.

**Tye:** And I think Curtis I think part of it is when they first hear this, they think Oh, I got to get a contract signed for every construction project and that's not what we're talking about. We're talking about an evergreen contract that sits there and it is sort of the document that manages the relationship with the sub right, and you can be as complicated or as simple as you need to be in that you can talk about everything. From how do we, you know, how do I pay you? How do you file a dispute? How do you know all the different elements of your relationship can be outlined and guess what? So, then you're not fighting about it later when the unfortunate situation comes up? So, we're not talking about executing one everyone is typically what we see. And this is the best practice we've seen with a builder that says, I'm going to have a sub I'm going to have a spreadsheet with all my subcontractors listed. I'm going to have a checkbox that says I have their insurance cert when it expires, and do I have an active sub agreement? And if you don't, exactly what you describe when they come in Friday, for the check, say, hey, your certificate is expired before we can have your checks ready? All we need is an updated certificate. That way you're not finding out Oh, I let it lapse four months ago. I've never updated you.

**Curtis:** Yeah.

**Tye:** So those are simple steps you can take and it's protecting you it's protecting your homeowner, and ultimately, it's protecting that sub whether he understands it or not.

**Curtis:** Yeah, I mean, on my consulting side of things, I mean, I always tell my consulting clients, you know, I recommend that you ask the builder if he does sub-agreements and asks for copies of him if he'll give it to you just so you can have some proof, right? Because even as the homeowner that's another layer of protection for you, you know, it rolls downhill.

**Tye:** So, there are some great standardized forms the Texas Association of builders, yeah. if you're a member of the tab, they'll give me they'll give you the sub agreement and it's standardized. it's been vetted by attorneys.

**Curtis:** It's ready to go that's what I use, it's free, and it's fantastic. You can modify a little bit if you need to but yeah, the whole relationship is right there on three pages, and it's done so, I don't know why he wouldn't do it but.

We talked about the ideal client aka dream client, whatever.

What kind of person do you think should not go through the construction process who shouldn't build a custom home with a custom builder?

**Tye:** Yeah, that's a great question. I think somebody who's paralyzed by decision-making it's not a great process for that because there it is. It is constant every day that the builder calls to know this and he knows this and the paint colors, tile selections, selections, the lighting, and all the switches right so if that's something that you just get bogged down and making decisions, I don't think that's a good place for you to live. If you don't respond to stress well because building a house when you're spending that much money, it's a stressful time and it can be stressful whether it goes perfectly or not. If you can, there are things that are outside of the builder’s control that can drive stress, and we've all lived through that recently with supply chain issues, right? I mean, we have multiple friends right now that are in the process of building houses. They've sold their home and they're having to go to temporary housing because appliances weren't ready windows weren't ready. The flooring wasn't ready. It's not a lack of execution. It's a lack of supply chain in the world. Yeah. So, if you can't just roll through that and feel like oh, I can make the best of every situation that can be a stressful time and so if stress wears you out, it is probably not a good situation.

**Curtis:** Totally. So, a while ago, you mentioned the story, anyway, do you have any other stories that you could share with us? Brain-fart ha-ha. Are there any other stories about insurance debacles or projects that went horribly awry that you can share with us just one?

**Tye:** Yeah. I mean, most of the challenging stories are around a big event. You know, some kinds of a like store we talked about was there a departure of a key employee right or there can be if there is something that happens on a site where I mean one of the really hard things for builders and I'll, I'll put a plug in there your I've witnessed your construction you do it safely, right. Well, we've all driven around Houston and seen construction sites where they've got old concrete form boards that are nailed together to make homemade scaffolding because they don't want to go rent scaffold, right? So, one of the things we deal with so often in the insurance world is where a cornice worker, a roof, or a trim carpenter that's climbing up on this homemade scaffolding or sometimes it's even legit scaffolding that's not put together right. They fall and this can just shut down a construction project. It's awful from a human element because of the injury. It's awful from a construction element because all of a sudden you as a builder have, you know, all these new departments OSHA that will show up and say hey, what have you done wrong and you feel like they're, they're looking for something to come after you for it's the nature of their job. So those are the things that I think of that are really they're really stressful and they can they happen. I mean when with the number of builders that we work with, I bet we see a fall from height once every two weeks to once a month. I mean, wow, a significant number it is. Think about how much construction is going on in Houston. It just happens. It happens a lot. And so, my encouragement is a man on those details where there can be a big injury, roofers, you need to be tied. Have them make sure they're tied off, right? Yeah. Don't let them climb around up there without tying it off the scaffolding thing is a real deal. And carriers are starting to insurance carriers are starting to have a real heartache with it because they're paying limits claims. Because I mean, if a breadwinner for a family falls and is injured or dies, they'll get sued and there's really not the carriers like if the builder is negligent in any way and didn't provide that safe workplace, they're at a limits claim. They just cut a check for the limit and go on down the road.

**Curtis:** Wow. Goodness. Yeah. I mean, it's shocking how many of these job sites like that are just really unsafe and you know I think there's a lot of machismo out there too, where it's like, you know, I'm not going to wear a safety harness, man, that's for sissies. You know, I saw a guy one time that had a water hose or a safety harness. He literally had a water hose around his waist, and you're like, come on. I mean, maybe it's better than nothing. Maybe I don't know.

**Tye:** That's better than nothing.

**Curtis:** All right. Well, I think that pretty much wraps up our insurance discussion. I really appreciate you coming and joining us today and I appreciate your friendship and our partnership over the years in business. So tell people how people can find Hotchkis insurance. Yeah, website, all that kind of stuff. Yeah.

**Tye:** So Hotchkiss Insurance is not hot kiss. It's Hotchkiss H O T C H K I S S and it's our website is <https://www.hiallc.com>

So, we're a Texas-based agency. We have offices in Houston, Dallas, Fort Worth in San Antonio, so, you can go to our website. You're welcome to call me my direct line is 713-292-5733. But you can find us on the web or email or call us and we'd be happy to help when we do, we do personal lines, and we do builder's risk for homeowners. We do construction, we do real estate. I mean we're full commercial lines agents.

**Curtis:** Yeah. So whatever business that you might be in if you're a listener viewer, then you know call Tye about that too. It doesn't have to be construction related. So fantastic.

**Tye:** Thanks a lot.

**Curtis:** Thank you. And thanks to all of you again for joining us. And I'll repeat our normal ending here.

We always teach that a successful construction project has those four key components represented by a simple drawing of a house so the foundation's planning, the left wall is your team, the right walls, communication, and the roof is proper execution. If you have all these components in place, your project will succeed. Thank you and see you next time.

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