

WEBINAR | EXPERT INDUSTRY PANEL

Construction Professional and Pollution Insurance: Ask the Experts

A Broker's Blueprint to Protecting Construction Professionals



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Ritchie
Vener:

Hello, everyone, and thank you for joining us for our webinar, Construction Professional and Pollution Insurance, Ask the Experts.

My name's Ritchie Vener, and I'm the Chief Marketing Officer at Distinguished Programs. I'm very excited to be leading the discussion today with members of our new environmental program. We pride ourselves on having the experience, flexibility, and depth of expertise to help brokers get their deals done. And this team really exemplifies that.

Just to let you know that we'll be sending out to all registrants a copy of the slides, the webinar recording, and a PDF with the questions and answers from today's session, including those that people put into the chat. If anyone has a question during the presentation, please use the Q&A button on the bottom of your screen.

Distinguished Programs is a leading national insurance program manager, providing specialized insurance programs for real estate, community associations, hotels, restaurants, fine art and collectibles, and environmental and construction professional. Our Environmental and Construction Professional program offers two main categories of coverage, premises pollution-focused products and contractor-focused products. During this 30-minute session, we'll focus on contractor-focused products. Are you ready to become the go-to expert of construction, pollution, and professional insurance? Let's get started.

Joining us today are Shelli Hamilton. Shelli serves as Senior Vice President for Distinguished, where she's responsible for the strategy, underwriting, and profitability of the environmental program. Shelli has over 25 years of sales and underwriting experience in the environmental and professional insurance industries. She holds certifications as a Registered Professional Liability Underwriter and a Chartered Property Casualty Underwriter.

Also joining us is Drew Linton. Drew is Vice President and a Senior Underwriter at Distinguished with over 20 years of environmental underwriting and consulting experience. Drew held leadership and management roles at consulting firms including Senior Project Manager at Kleinfelder, Inc. in Hamilton, New Jersey, Associate Geologist at Stantec Consulting Corporation in Westchester, Pennsylvania, and Senior Hydrogeologist at Leggette, Brashears & Graham, Inc. in Shelton, Connecticut.

Ritchie Vener: To ground the conversation, let's quickly run through some of our insurance program basics before we get to the attendee questions. So let's start with question to you, Shelli. What is construction professional and pollution insurance?

Shelli Hamilton: Thanks, Ritchie.
A typical contractor's GL policy has very limited, or no, coverage for pollution or professional events. Pollution coverage protects the contractor if they cause a pollution condition or spread an existing pollution condition. Coverage is for scheduled contracting services and completed operations, and includes coverage for cleanup cost, property damage, bodily injury to third parties, as well as related legal costs.

Professional coverage protects against claims arising out of an acts, error, or omission in professional services. In order to have adequate professional coverage, a contractor should have coverage for damages, including economic damages. Economic damages is a real key, important aspect with professional coverage.

Your contractor's professional coverage should also not be tied to pollution coverage. So it should be an independent standalone and sharing agreement. It's also important to note that CPL and Professional policies protect contractors for their vicarious liability when they hire others to perform contracting services or professional services. And generally, legal costs are in addition to the limits of liability, and the policy has many other enhancements available.

Ritchie Vener: Okay, thank you, Shelli. That was interesting.
Maybe, Drew, could you maybe drill down on that a little bit further. What types of coverage are typically included in the policy?

Drew Linton: Absolutely.
One thing I really love about our policy forms, which are easy to read and communicate, are that they're menu-driven and can really be tailored to the contractor's needs or the specific account. Our insuring agreements include contractor's pollution, job site coverage, emergency expenses. Both pollution and professional protective

Drew Linton: coverage, rectification, owned location coverage, not on disposal site or nodes, transportation, business interruption, legal costs and defense outside the limits, and supplemental coverages such as ADA, FHA expense, bankruptcy litigation expense, BIM expense, disaster management costs and subpoena expense, and our business interruption coverage is something that's really unique in this space. Something to note on our policy forum.

Ritchie Vener: Okay. Thank you, Drew.
Drew, I'm going to ask you a little bit further. One thing I love about this program is that we cover so many different classes of business, but if we had to narrow down a little bit, what are the target classes?

Drew Linton: It's a great question. So we try to target, but are target's kind of broad and kind of wide. But here's some examples we have. We like commercial contractors, such as construction managers, your design-build contractors, environmental contractors, GCs, and your trades, like your HVAC mechanical, plumbers, roofers, industrial cleaners, electrical contractors. We love street and row contractors, civil contractors, FBOs, painting contractors and masons.

Targeted classes include, but really not limited to this, civil construction, commercial, educational, habitational, hospitality and healthcare, industrial, institutional, retail, and warehouse.

Ritchie Vener: So, Shelli, let's get a little bit more specific. How do the various policies work, starting with contractor's pollution legal liability, what we call CPL?

Shelli Hamilton: Sure. So if you think about CPL coverage, the policy is triggered in the event of a pollution condition that results from contractee services or completed operations. The coverage also includes cleanup costs. And here's just some examples of situations contractors can get themselves into with regards to pollution exposures. Let's say a contractor's at a job site, and they're doing some excavation work. And they inadvertently hit an unknown underground tank, and it releases product. The contractor's responsible for that. They're responsible for the cleanup and other potential damages associated with the release of that product.

Shelli Hamilton: Another example we've seen is an electrical contractor who's pulling wires through buildings and disturbed some asbestos. He didn't realize that there was asbestos behind the wall. So in this case it got spread throughout the building, and there's cleanup for that. And also potential BI to third parties in that situation.

A third example, I mentioned completed ops, how important that is. So we had a contractor who was installing windows. They left the job site. It had been two years since the project had been completed. In this case, it was a school. The school was power washing the building on the outside over the two years, and water infiltrated in through the windows and mold slowly developed. So that turned into a very large completed ops claim that included payment from the window contractor and the general contractor.

So those are just some examples of why contractors need pollution coverage, and what's covered there.

Ritchie Vener: Okay. Thank you, Shelli. Drew, let me ask this one of you. Let's next talk about contractor's pollution and professional legal liability.

Drew Linton: Absolutely. This one's great. It has all the great stuff in our pollution coverage as we discussed earlier. In addition, we add coverage for professional liability that's resulting from an actual or alleged act, error, or omission from professional services performed by, or on behalf, of the insured. So it's everything you get under that CPL, or contractor's pollution liability, policy. And then we add the ensuring agreements for professional liability.

As Shelli mentioned earlier, it's true adequate professional liability coverage, and it shouldn't be tied to a pollution condition. One example we have of this is that there was a builder who subbed out the design of a concrete foundation. Design was inadequate, and based on this inadequate design by the hired design professional, the contractor didn't use enough rebar when they were laying down the slab. The building then subsequently was complete and had structural issues, and a claim was brought against the contractor by the building owner.

Ritchie Vener: Wow. Okay.
Shelli, who typically purchases CPL insurance?

Shelli Hamilton: Coverage is generally contract-driven. So if a contractor wants to get on the job site, they have to prove that they have this coverage in place in certain situations. Keep in mind, though, even without a specific contractual requirement, the contractor can still get sued for pollution conditions or professional services. So contractors who want to protect their business and their reputation really should consider buying contractor's pollution and professional coverage.

Ritchie Vener: Okay. All right. Thank you. And, Drew, what limits are available?

Drew Linton: So all of our contracted related products, as well as our site pollution products, we have capacity up to 25 million in the occurrence and 25 million in the aggregate, with additional defense outside the limit, which we usually apply a percentage of the overall aggregate policy limit. In this space, most of the time we find the contractors find it adequate to secure less than 5 million in limits, and the smaller contractors purchasing a million or 2 million in limits. We are seeing a lot more requirements being pushed down from municipalities, government entities, or other contractors that the limit requirements are increasing from the smaller one to two mil limits to five, maybe even 10 million, whether it's a project specific or on a blanket practice.

Ritchie Vener: So, Drew, given those limits, what is the average premium per policy?

Drew Linton: Great question. So for the CPL, the contractor's pollution, the minimum's around 5,000. And then for the contractor's pollution and professional policy, it's around \$7,500. For us, I would say our average premium range is around the 20,000. Our sweet spot, so to speak, is between 20 and 50,000 annual premium.

Once you start building in that professional component, the price obviously increases as you're getting more coverage. And then it's really subjective, in that it depends on the nature of the professional work being performed and the contracting work in general. And whether or not they sub it out or keep it in, or self-perform. And there are factors that go under these pricing decisions. Project policies generally have higher premiums than that.

Ritchie Vener: Well, let's talk about project policies. Shelli, can you give us a little insight?

Shelli Hamilton: Sure. So we do have the ability to offer contractors project policies for pollution only, professional only, or a combined pollution professional. Typically, a contract policy is required if a contractor is required to have a specific limit of time on the job. So they have to be on the job for two years, and then they've a completed op. So the contract will say, we need you to have the insurance in place for that period of time.

So similar to the GL, a pollution project policy can be purchased by a contractor, such as a trade contractor or GC. It can be purchased by the GC as the first name insurer to protect everyone who's on the job site themselves and the trades. Or it can be purchased by an owner, similar to GL, for the first name insured being the owner, and then the contractors on the job site to cover them.

Another type of project policy is owner's protective policy, and this is a professional indemnity policy intended to protect the owner against losses from an act, error, omission rendering of subcontractor professional services on their project. Pollution can also be added to this policy. The reason owners buy this is because they may not be satisfied with the limits that their design professionals or contractors are carrying. So this coverage affords additional limits on top of those limits that are already available from the design professionals or the contractors.

The average premium on the OPPIs tends to be a little bit higher. It's like a wrap policy. Our minimum premium is closer to 50,000 on the OPPI program.

Ritchie Vener: Okay. All right. Thank you, Shelli.
And then, Drew, our final product is the follow form excess liability. Could you tell us a little bit about that?

Drew Linton: This is my absolute favorite form. As everybody knows, policies and endorsements can be complicated. This one's very simple, straightforward and short and sweet, very easy to read. And it provides additional follow form layers of coverage above an underlying scheduled policy or policies. We can write this policy above another carrier for all the coverage that we've described here today. The access form is used when a contractor or an owner is trying to build a large tower of limits, for example. Or if another carrier is not willing to offer the full limit required by the project. And again, this is something we're seeing more and more as the requirements for limits are going up on a contract basis.

Ritchie Vener: And, Drew, what policy term length is available on these policies?

Drew Linton: Policy terms for the practice policies are typically one year. On occasion, we can offer a two-year term. Policy terms for the projects, they match the length of the construction phase as well as any required completed operations or state statute of repose. In all, we can write those up to 17 years in total in some cases.

Ritchie Vener: Hey, Drew. Let me ask you another question. It's a little unfair because I know it can be complex, but how is premium calculated? Can you give us a short look at that?

Drew Linton: Yeah. The CPL and the combination CPL professional, they're rated off of the construction or contractors' revenue for a given year. So we generally use a two-year average to come up with a revenue that we use. It's a little bit different on the owner's protective policy. That's truly project specific, so based on the revenues of that specific project. But it also takes into account the complexity of the project type and other matters within the contracts and such. On the follow form excess, again, this is much more simple. Pricing is generally a percentage of what we have on the underlying primary carrier, or what they're charging. The general rule for that is between 40 and 60% of what the underlying carrier charges.

Ritchie Vener: And then, Shelli, in the case of some adverse event happens, how are claims handled?

Shelli Hamilton: Claims on our policies are handled by our experienced in-house claims attorneys. Our claims team, they're an essential part of Distinguished Environmental Construction Professional Pollution Program. Our claims team will work closely with the insured from the time a claim comes in until the conclusion of the claim. We communicate and really just help the insured in this difficult situation.

Ritchie Vener: Let's dive into some of the questions from attendees that sent them in via email ahead of time.

First question. How can an insurance broker successfully sell construction professional and pollution insurance? Drew, could you take us through that?

Drew Linton: Yeah. Fortunately, just about every broker out here, you're going to have some construction risk in your book, whether it's a general contractor, street and road, trades, such as electrical, plumbing, roofers, or HVAC mechanical. They're everywhere. And every broker's book generally has some contractors. It's just a matter of recognizing that exposure and selling the pollution and professional program.

We've found that sharing claims situations with your contractor often helps, even if they're not contractually obligated to purchase this coverage. The contractor does still have that liability, as Shelli's talked about previously, for the services they perform. A lot of contractors do need it through their contractual obligations. So they should be used to hearing these terms. It's just whether or not they understand that it's available through you and really affordable for them in most cases.

Ritchie Vener: Shelli, I'm going to give this one to you. What strategies do we use to assess and tailor coverage to meet the unique needs of clients?

Shelli Hamilton: Depending on the type of contractor and the type of client they have, there's lots of ways we can really tailor the coverages. And a lot of what we do is specific to the just the project and the contractual requirements. So we have the ability to craft manuscript language and work around those needs. The best thing is, even if you have a situation where you have a contractor who has a special need, pick up the phone, give us a call. We have so much flexibility with the product and bells and whistles that we can add.

Ritchie Vener: Okay, that's great. Drew, I think I got this question correct. What are some proven tactics brokers can use to help close a construction professional and pollution insurance?

Drew Linton: The main thing is to really educate that there is real exposure. If you look at the news recently, there's a lot of pollution and potential professional items out there. One was just the big spill in the Delaware River that jeopardized drinking water for almost an entire city. The tragic train derailments we've been seeing, the one in Palestine, Ohio. There's one in Maine. The plant fires. This is all exposure to folks with hazardous conditions.

Some of these are not as spectacular as a train wreck, or newsworthy, so to speak. But a contractor can easily have \$100,000 mold issue they weren't expecting, and this can really impact their bottom line profitability in a year where they weren't anticipating it. So these are the looming exposures out there that can hit them in their pocketbook pretty quickly.

Ritchie Vener: Okay. And then, Drew, how can an insurance broker help their clients understand the coverage and limits of construction professional and pollution insurance?

Drew Linton: Again, educating them on what the potential exposures are. Every contractor has a story. "Oh yeah, I did have that drywall that I had to replace. It got wet and moldy." Maybe their experiences are larger or smaller, or it didn't cost that much money. But there's ample claims out there that reach into the tens of thousands, hundreds of thousands or millions, or even tens of millions now. It's really just getting that message through to them and giving them the understanding of the exposures and the potential claims that could fit that business class.

Ritchie Vener: Shelli, how long is the average turnaround time for submission?

Shelli Hamilton: So we get rush submissions frequently, and we can turn submissions around very quickly. We'll have a contractor who's on a job, and they need to get the insurance in place. We're going to put those as a priority and get them turned around very quickly. If it's a more complicated deal, if there's contract language we have to review from a professional standpoint, it may take us a little longer. But generally, you could expect a quote back from us within 24 to 48 hours.

Ritchie Vener: Just to make sure that I understood that correctly, because it sounds powerful to me. This sounds like a pretty complicated business, and you can turn these around, and of course the longer time you have the better, but you can actually turn these around in a day?

Shelli Hamilton: We can. We have 15 underwriters that can work through submissions. So we're available. We're even really great at giving indications. So if you have a contractor, and he has a project. And he's putting in a bid, and he needs coverage pollution or pollution professional, we can turn that around. We can have a discussion and make some assumptions so that they can get their bid in. So that's another thing that will add to our turnaround time.

Ritchie Vener: And if a broker wants to submit business, what do they need to do?

Shelli Hamilton: So some of the brokers on this call probably have a favorite underwriter that they work with here are Distinguished. So continue to work with your favorite underwriter. If you don't have a contact, definitely reach out to me. You can see at the bottom of the screen my email address is shamilton@distinguished.com.

Also, Doug Stepenoski, our president's email address is available there. So please reach out. We'll get someone to contact you immediately and service your accounts.

Ritchie Vener: That that's great. And just reminded to everybody, we will be sending everyone who registered, and everyone who's on the call today, this information including copy of the slides, the webinar recording, and a PDF of the questions and answers from today's session. And of course, feel free to reach out directly to Shelli and Drew, or to Doug.

If you enjoyed today's webinar, stay up-to-date on our latest events by following us on social media. We post about insurance market insights and industry news. And you learn about our latest free webinars, eBooks, and case studies.

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Webinar Addendum

Below are additional attendee questions we could not address during the session.

Are these shared limits in a program?

We have the ability to share limits in one program OR to offer separate limit for pollution coverages and a separate limit for professional coverage. This can be completed on one form, our combined CPPL form.

Does it include or can it include coverage for faulty workmanship

We have a limited ability to cover faulty workmanship on our policy. We have an endorsement that we can add which provides \$250K sublimit for contractors workmanship coverage when the contractor is manufacturing or fabricating the material(s) such as: asphalt, concrete and ductwork.

Does your CPL/CPPI provide coverage for contractors working from a watercraft?

We do not have restrictions specific to working from a watercraft.

Is there a specific app you need to quote?

We have a [CPPL combined form application and a project specific professional application](#). If you would like the CPL application please let me know.

We have the ability to use other carriers professional and pollution application – If the application gives us what we need, we can also bind from that application. We try to be sensitive to the fact that contractors do not like to complete applications!

Would a GC need PL if the architect was hired directly by the owner?

In regard to GC's there are a few different professional exposures for GC's such as value engineering, constructability reviews or field changes to design., Another large exposure is the vicarious liability when the GC hires the trade contractors who may perform their own designs. Because the GC hired the trade contractor, they have responsibility and will likely get brought into a claim along with their subcontractor.

What paper are you using?

We write on SiriusPoint paper with over \$2.9 billion total capital, SiriusPoint's operating companies have a financial strength rating of A- (Excellent) XV from AM Best.

Is there appetite for marine contractors?

We have entertained sea wall contractors and have written some levee construction projects but typically we offer coverage on a project basis and not as an annual renewable project policy.

Why would an owner need PL?

Owner's buy PL when they are concerned that the limits of the design professional/ design build contractors/ construction managers may not be adequate enough to protect the owner for a professional error on the project. Here is a recent OPPI claim that we came across in a submission we were reviewing:

An Owner of a large apartment complex hired a geotechnical firm. The geotechnical firm had an error in their investigation/reportings at the site, this error caused issues with the concrete and the subsequent building stability. The cost to remedy the problem was well excess of the \$1M professional policy that the Geotech had in place. Their OPPI policy paid the excess of that \$1M.

If an owner hires a Design Build contractor and the design is inaccurate there is a possibility that the design professional does not have adequate insurance. This could happen if the owner hires trades who do their own design, such as fire sprinkler, HVAC, plumbing etc.

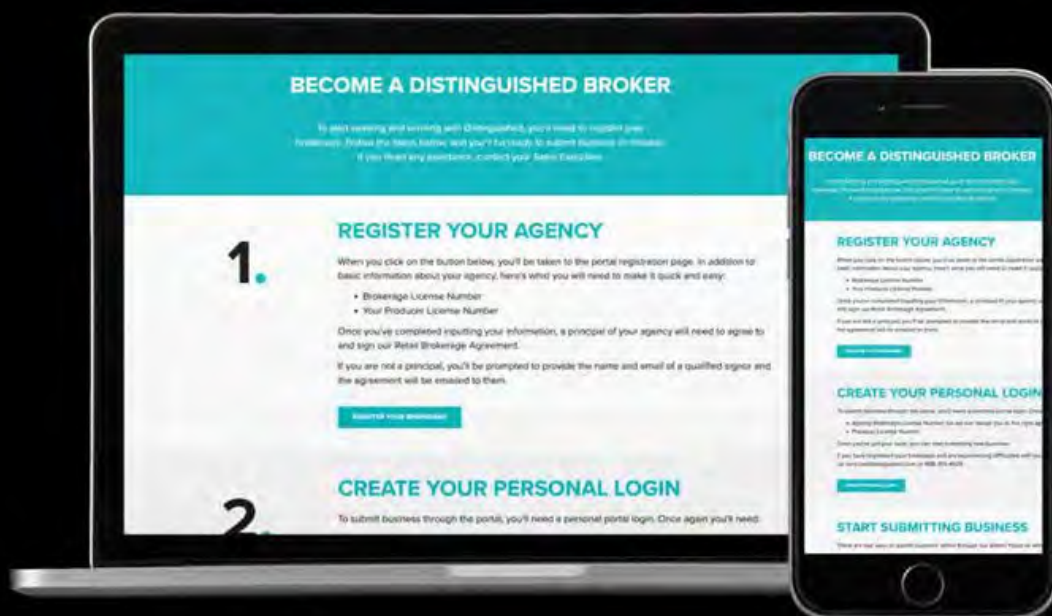
Can you provide some Professional [Claim examples](#) for Home Developers?

The ones that stand out are the claims identified as: Roofing Contractor claim, General Contractor, Concrete Contractor, and Specialty Contractor. We also see numerous Surveying error claims with development that are not mentioned on this sheet.

Here at Distinguished we have not historically provided professional coverage for homebuilders. However, we have been looking at our OPPI product for smaller to medium sized homebuilders. When the homebuilder hires an architect or engineer the OPPI policy would sit excess and DIC of that architect or engineers' insurance. We recently reviewed an account that had a large claims because the Geotech reports were not accurate which caused major settlement in the concrete slabs. The Geotech design professional only carried \$1M in professional limits, the claim was much larger than that -- the OPPI policy responded to that claim excess of the Geotech insurance.

We don't offer professional coverage for the real estate and development exposures that some Developers may have – our professional is specific to construction design.

Build more trust and grow your business with Distinguished Programs.



Learn more about our quick online registration process

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