

# Bridging Contractors' Overlooked Coverage Gaps

**S**ome risks on construction projects are obvious, and the solutions relatively straightforward.

Safety risk, for example, can be mitigated by thorough training, following protocol when operating or working near heavy machinery, and wearing a hard hat and other protective gear.

But other exposures are not so obvious. For example, many contractors overlook the risk of creating or contributing to pollution conditions and don't consider their environmental liability. After all, they aren't working with toxic materials, they reason.

Contractors may also fail to recognize the professional liability they retain when hiring a design consultant or engineer. Should a claim arise, relying on general liability coverage could leave contractors in a bind as general liability policies typically exclude these risks.

Contractors need to understand all the risks they face — both during a project and after — and that there are several different mitigation strategies to consider. Pollution and professional liability coverage tailored specifically for contractors, for example, can fill in these often overlooked gaps.

## SURPRISE POLLUTION EXPOSURES

Pollution can come from unexpected places on a work site.

Because the interpretation of what constitutes a pollutant changes from jurisdiction to jurisdiction, an everyday material could still pose an environmental risk. A floor sealant, for example, could be considered a pollutant if it releases toxic fumes. Silt or sediment runoff could be labeled a pollutant if it causes damage off-site. Improperly contained dust particulate could also be considered an environmental danger.

"Jurisdictions have different interpretations as to when a condition becomes an irritant or contaminant, and therefore a pollutant," said Spencer Levin, director, contractor's environmental/professional, The Hartford. "Once the term 'pollutant' is applied, an exclusion to the general liability policy could kick in."

"A contractor's pollution policy bridges the gap," said Shelli Hamilton, assistant vice president, construction group, The Hartford. "Especially if you're working in multiple jurisdictions, a pollution policy offers coverage not provided in general liability policies."

There can also be environmental claims that arise years after a project is complete.

One contractor, for example, was charged with installing new windows throughout a school. The school's maintenance program required the use of a high-powered washer to clean the exterior of the building.

"Each time they power washed the building, there was unknown water infiltration around the windows, and mold eventually started to grow. The whole school became contaminated," Hamilton said.

"The contractor completed the job years before the mold was discovered but the school district sued the general contractor and subcontractors. It ended up as a multimillion-dollar claim for the mold remediation and replacement of the windows and damaged drywall.

"Contractor's pollution policies will often respond to pollution conditions which stem from completed operations," Hamilton said. "Contractors can even purchase project-specific policies with durations up to 15 years in order to meet a state's statute of repose for construction defects."

A contractor's pollution insurance policy can also extend to liability a contractor may have resulting from waste sent to a non-owned landfill or recycling facility.

"This is another one of those unexpected sources of environmental liability for a contractor. If a contractor becomes a potentially responsible party because of waste they sent to a non-owned disposal site, a pollution policy may respond to claims coming from a regulatory authority or neighbor to the landfill," Levin said.

## THE PROFESSIONAL LIABILITY PICTURE

General contractors who do not self-perform design or engineering also frequently overlook professional liability they carry vicariously through their subcontractors. Contractors that conduct constructability reviews, handle construction management or provide value engineering also may face greater professional risk exposure than they realize.

Architects, engineers and design professionals certainly have their own professional liability policies, but the general contractor may still be held responsible for damages exceeding those subcontractors' coverage. General liability policies typically do not cover



**Environmental and professional liability exposures** can be some of the most difficult for contractors to mitigate and insure.

the economic damages and financial losses from errors and omissions that a professional liability policy normally provides.

This leaves more gaps that not all contractors are aware of. To make sure their bases are covered, general contractors should look for a professional indemnity policy with a protective component. Protective insurance provides a backstop should a subcontractor's policy limits not cover the full cost of a claim.

"If, for example, a general contractor secures a \$5 million judgment against a subcontracted architect for E&O, but the architect only has \$1 million in professional liability insurance, the contractor can file a protective claim to make up for the difference," Levin said.

A professional and protective policy that consists of flexible coverage options allows contractors to meet their specific needs.

"Some coverages will be more useful than others for contractors, depending on the type, scale and location of the project," Hamilton said. "Flexible and customizable policies give clients the ability to select what they need to fit their project and their budget."

According to Hamilton, more contractors are beginning to realize the value of this coverage, and professional liability insurance is in fact becoming a more common contractual obligation required by clients.

"A contractor's professional liability policy not only provides protection from subcontractors' errors, it also provides an advantage when seeking new projects," Hamilton said.

## MORE THAN JUST COVERAGE

When that unexpected claim happens, it's important that your insurance carrier has a dedicated claims

staff on hand to guide contractors through a pollution or professional liability event.

"No pollution or professional claim is the same. You can't necessarily anticipate where claims will come from or how regulatory bodies will react to them," Hamilton said.

"It's vital to have the claims expertise at your side to protect you in those situations."

"In-house claims specialists who understand project delivery methods and the construction industry are imperative," Levin said. "These experts are the most important piece of the package; their knowledge is really what you purchase when you buy insurance."

Sometimes, it doesn't even take a claim to summon expert resources.

"Some carriers offer emergency response services if a contractor runs into a pollution condition while working on site," Hamilton said. "Look for a carrier who will go in and help to clean it up immediately. You want a proactive carrier who doesn't wait for an event to escalate into a claim before addressing a problem."

But a carrier's capacity matters, too. Contractors should look for a carrier that demonstrates commitment to the construction industry and that can handle big projects — and big claims that may come with them.

To learn more about The Hartford's coverage for contractors, visit <https://www.thehartford.com/construction>

*Insurance coverages mentioned in this article are underwritten by the Hartford Fire Insurance Company and its property and casualty insurance company affiliates. This article contains only a general description of coverages which may be provided and does not include all of the features, exclusions, and conditions of these policies. Certain coverages, features and credits vary by state and may not be available to all insureds. All information and representations herein are as of August 2016.*