

Professional liability essential coverages: A changing landscape

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Did you know?

BIPD, Breach of Contract and Pollution Liability are three essential elements of any Professional Liability policy, but...

...the market is often ineffective at addressing these areas

...coverage misconceptions are common

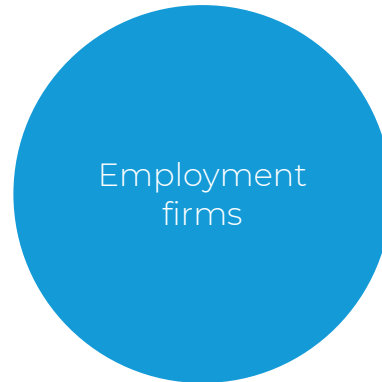
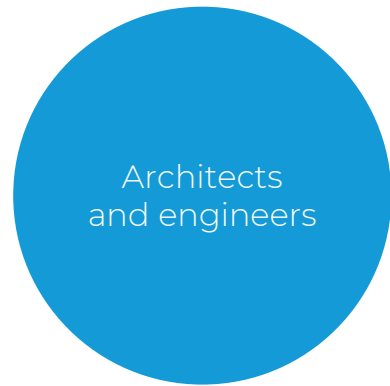
...lack of appreciation for these areas allows carriers to exclude them or partially carve them out

... price considerations often trump quality of wording



Key product areas

Plus accompanying excess / umbrella:





Bodily Injury and
Property Damage

Why talk about it now?

- Bodily injury claims increasing in potency
 - Social inflation
- BIPD claims can be bought against **anyone and everyone** involved in a project
- Defense costs will need to be paid from the outset
- Many client contracts signed include duty to ensure health and safety of the workplace or site

Common misconceptions

Will your BIPD coverage react when it matters most? Not always...

Monoline PL:

- BIPD sub-limits
- Total BIPD exclusions

PL/GL package products:

- PL will contain a BIPD exclusion
- GL contains complete professional services exclusion

Monoline GL:

- Warrant PL
- Complete professional services exclusion

Claims Considerations

Architects and
engineers

Oil and gas

Miscellaneous
professional
liability

Staffing

Considerations... A&E

Designers are not safe from professional BIPD claims

Architects

- \$100,000 for claimant who fell down stairs designed by the Insured.
- \$300,000 for health difficulties caused by faulty installation of HVAC unit. Insured was the architect of record.

Interior designers

- Claim reported for injuries were sustained to Claimant who fell of their chair. Insured had just designed the seating layout...

Sprinkler system designer

- \$300,000 for water damage to property when sprinklers went off.

Considerations ... O&G

O&G Industry values General Liability, it is up to us to emphasise the huge Professional exposures

Company man leasing firm

- \$6,000,000 for bodily injury to well site worker which occurred under the observation of Insured (company man). No direct involvement

Petroleum engineering firm

- \$75,000 for allegations that Insured negligently allowed Claimant to be exposed to dangerous chemicals, leading to his death from cancer.

Drilling consultant

- \$15,000 for incorrect selection of well casing.

Considerations ... MPL

Professional BIPD coverage needed for all but the most benign professions

Environmental consultants- Environmental Site Assessment misses site contamination which causes health problems in construction workers?

Event planner- Vicarious liability for injuries sustained by event guests, caused by vendors you organised, e.g. catering or performers.

Health and safety consultants- Can ultimately be held liable for any and all workplace accidents. Also applies to any profession which has a duty of health and safety written into contract (more common than you may think!)

Considerations... Staffing

General Liability is not a safeguard against Insured's liability for failing to vet problem candidates

Failure to carry out sufficient vetting, leading to an incident on site.

- Criminal convictions
- Inadequate training
- Other misrepresentations

BIPD and CFC

Absolute peace of mind

For professionals:

- Professional liability - Contingent BIPD as standard.
- General liability cross-sell – no exclusion for professional services.
- Duty to Defend.

All bases covered

For contractors:

- Professional liability - Contingent BIPD as standard
- Duty to Defend.

Affirmative BIPD coverage for professional services of a contractor



Breach of
contract

Why talk about it now?

- Across the board, firms are being held to more stringent contract stipulations
- Overlooked area of PL coverage, often presumed to be a 'GL' coverage.

Professional exposures of contractual liability

- Insurance that covers liability the insured assumes under a contract.
 - Failure to perform / failure to meet contract deliverables
 - Failure to abide by a scope of services
 - Can be detailed and rigorous
 - A breach of contract can occur even whether the contract is written or if it's just a verbal contract
 - Indemnification agreements

If the insured's liability would have existed on the absence of a written contract, then breach of contract is a vital coverage for any insured.

Common misconceptions

Without doubt, this is one of the market's most problematic coverage areas

Full Exclusion for Contractual Liability under PL

- Very common- at least 5 major competitors

Liability for Others' Exclusion

- Very common- at least 3 major competitors
- Hold harmless obligations unprotected

Common misconceptions

‘Wait, it’s a GL coverage isn’t it?’

PL/ GL Package

- PL- Contractual Liability Exclusion
- GL- contractual liability coverage, but complete professional services exclusion.

Monoline GL

- Warrant PL
- Complete professional services exclusion.
- Base ISO Form:
 - *Built in Professional Services exclusion to the limited contractual liability coverage, applying to any architecture, engineering or surveying.*

Claims Considerations



Architects and
engineers

Staffing

Miscellaneous
professional
liability

Breach of contract and CFC

Coverage features

- Full Breach of Contract coverage
 - Professional trigger
 - No exclusion of Indemnification provisions
 - Duty to Defend

It's as simple as that.



Pollution liability

Why talk about it now?

Oil and gas always comes to mind, but there is so much more to it!

- An ever-present feature of the claims landscape.
- Another 'emotive' issue - vulnerable to social inflation
- Well known O&G pollution issues have set the agenda
 - Deep Water Horizon- 10 years ago!
 - Offshore spills remain in double figures.
 - The Fracking Revolution

Common misconceptions

An essential coverage to have under the PL

- Look out for:
 - Blanket Pollution Exclusion on some professional wordings
 - Discovery/ Reporting deadline
- Contractor's Pollution Policies often specifically exclude Professional Liability/ Professional Services
- ISO GL Form- pollution is excluded in any meaningful way

Pollution liability and CFC

Where do we see major professional pollution exposure

- Construction Managers/ General Contractors
- HVAC and plumbing
- Oil and Gas consultants/ project managers
- Freight brokers
- Emergency / disaster planning consultants

CFC Coverage features

- No discovery or reporting deadline
- Full (higher) limit if required
- O&G form:
 - Claims-made trigger under the PL
 - Claims-occurrence trigger under the CGL
 - No fracking exclusion
- A&E, Staffing, MPL:
 - Claims-made trigger under the PL
- Duty to Defend



Key conclusions

CFC offers professional liability with all the essentials

Cross sell provides absolute peace of mind

Intuitive, clear wordings

Competitive pricing

Consistent, accountable underwriting

24 hour turnaround

Any questions?

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