



Additional Contractor Environmental Claim Scenarios

In our article [Contractor Pollution Risk: Insurance Claims Can Offer Clues to Best Coverage Options](#), we examine claims scenarios where the right environmental insurance coverage might have mitigated out-of-pocket expenses for the insured.

The following are additional claims scenarios that illustrate the variety of environmental exposures contractors often face. It is often helpful to see how claims occur and how a policy responds.

Contractors Professional Liability (CPL) & Pollution Liability

Third- Party Professional Liability Claim — Mid-Project Design Changes

- A contractor was sued by subcontractors for changing the design of a central chilling plant on a large jail halfway through the project. The contractor changed the design from a central chilling plant to a four-stage chilling facility and the subcontractors incurred more than \$20 million in additional costs as a result. The total loss was more than \$5 million, including expenses.

First-Party Protective Liability

- Significant structural design flaws were discovered at a mixed-use retail condominium project parking deck where the engineer had \$1.5 million limit in coverage. Incurred losses were more than \$6 million. Protective coverage paid the difference between the available limit and the total loss.

Pollution Liability — Improper Characterization of Hazardous Waste

- During the demolition and construction of a new library, a general contractor failed to properly identify asbestos in pipes which led to the contamination of an adjacent site. The project owner asserted a claim against the general contractor with alleged damages of nearly \$12 million.

Contractors Professional & Protective Indemnity (CPPI)

Surveyor and Design Error

- A design-build contractor responsible for an 11-story dormitory for university housing commissioned and subcontracted a geotechnical study for the deep foundation. Differential settlement was specified to be no more than a half inch.

Construction of the rammed-aggregate pier system was completed with no apparent issues, and installation of the building cast-in-place concrete framing proceeded once the foundation was complete.

While constructing the eighth floor, the contractors noticed settlement, and surveys revealed excessive differential settlement throughout the tower. Some areas of the tower had settled as much as five inches and construction of the tower was stopped.

The rammed-aggregate-pier subcontractor discovered and acknowledged that they had made a design calculation error that accounted for half of the settlement experienced, but they firmly stated that not all the settlement was caused by their design error. Some of it appeared to involve the compaction of soils, or the lack thereof, when the lifts were completed.

The situation resulted in \$30 million in damages, including \$12 million hard costs, \$10 million acceleration, \$2 million in extended general conditions, \$2 million in lost productivity and \$4 million in overhead and profit. The designer had a \$9 million limit of liability, so protective indemnity coverage was triggered to pay the amount over the designer's limit. The claim was resolved through arbitration with \$9 million from the designer.

Management Error

- A construction manager providing “value engineering” services directed the architect to change the design of the mechanical system from four separate chiller systems to one central chiller plant. After startup, it was determined that one plant was not enough to cool



the entire facility. The project owners made a claim against the construction manager for cost overruns. The total loss was \$8.5 million.

Delay Damages

- A contractor retained an architect for a school project, and the architect provided a certificate of insurance showing \$3 million limit of liability. During construction, a design defect was discovered that delayed the project for several months. The school district was forced to rent portable classrooms and claimed substantial damages against the contractor. The contractor passed the claim on to the architect, but the \$3 million limit of liability insurance had been eroded by other claims. The contractor was held liable for the damages.

Sick Building Syndrome Claim

- A firm with a professional/pollution policy was installing a new HVAC system for an existing building. Sealant fumes from their work rose through the ducts and the fumes made people in the building sick. There was a claim made against the contractor who installed the system.

Rectification & Mitigation (R/M) Policy

Replace Drywall During Construction

- The subcontractor of a construction manager installed drywall with mold growth into the project during construction. The contractor replaced the drywall but incurred material cost and delay costs near \$1 million. The contractor received \$600,000 in payment from a mitigation policy and received the remainder from subrogation against the subcontractor.



Owners Protective Professional Indemnity (OPPI) Policy

Error Calculating Steel Costs

- A project owner hired a structural engineer to determine structural steel needed for a mixed-use project. The engineer used the incorrect code for this project resulting in higher structural steel costs.

The owner incurred \$5 million in additional costs due to the negligence of the structural engineer. The owner asserted a claim against the structural engineer for those additional costs, but the engineer's policy had only a \$2 million limit. The OPPI policy sat excess of the engineer's practice policy to cover the owner's remaining \$3 million in loss.

Single Family Community Project

- The owner of a 500-unit single-family community project hired a civil engineer to design a dam, spillway and bridge to create a lake that would be the centerpiece of the new community.

The dam failed, leading to \$5 million in owner claims related to increased construction costs, delay and diminished project value. Alleged damages exceeded the civil engineer's \$1 million professional liability policy. The matter ultimately settled for \$2 million above the civil engineer's policy limits.

Impact Caused During Redevelopment Activities

- Construction debris containing friable asbestos material was found in the soil during grading activities at an industrial park. The contractor had neglected to remove asbestos-containing material present in the buildings prior to demolition. Further, the contractor had plowed the construction debris into the ground instead of disposing of it at an appropriate hazardous waste facility.

The oversight agency ordered the industrial park owner to excavate and properly dispose of the hazardous debris and soil. Cleanup costs associated with excavating soil contaminated with friable asbestos were approximately \$2.3 million. The contractor who had failed to properly dispose of the material had only \$1 million in CPL, leaving the owner of the park to pay the additional \$1.3 million.

DISCLAIMER: The claims scenarios in this are provided solely to illustrate the variety of environmental exposures faced by your clients. This information is not intended as professional advice and should not be construed as such. The facts of any situation which may arise and the terms, conditions, exclusions, and limitations in any policy in effect at that time are unique. No representations are made by Amwins that any specific insurance coverage applies to the above claim scenarios. Any insurance product and coverage descriptions are strictly for informational purposes only. Please refer to the actual policy declarations and policy form for a complete description of all applicable terms, conditions, limits and exclusions. The insurance products described in this newsletter may not be available in all jurisdictions. The information presented herein is not intended as a solicitation or offer to sell any insurance product in any jurisdiction in which such solicitation, offer, or any sale or purchase of the described insurance products would be unlawful under the insurance laws and regulations of such jurisdiction.

