

Workshop W1

Wednesday, November 4, 9:00 a.m.–noon

FILLING THE HOLES IN CONTRACTORS' LIABILITY COVERAGES

Presented by



Jeff Slivka
Executive Vice President
New Day Underwriting Managers LLC

This fast-moving session will pinpoint common problems that can result in gaps in contractors' liability coverages, including general liability, umbrella liability, contractors professional liability, and contractors pollution liability. Often, there are relatively easy "fixes" that can close holes in the basic policy form and avoid unexpected gaps in coverage. Find out how to maximize the value of your liability insurance program (or your client's) and protect the company balance sheet from a potentially devastating uninsured loss by closing these common holes in a contractor's liability program. Even where gaps can't be closed, contractors who know they exist can make informed decisions about alternative methods of managing these risks.

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**Owners, Contractors,
Subcontractors,
Designers and Sureties:
Coming together for best
practice construction
contract documents.**

The Only Construction Contracts Endorsed by 23 Leading Industry Associations



For excerpted sample contracts visit www.ConsensusDOCS.org.

The Only Construction Contracts Endorsed by 22 Leading Industry Associations

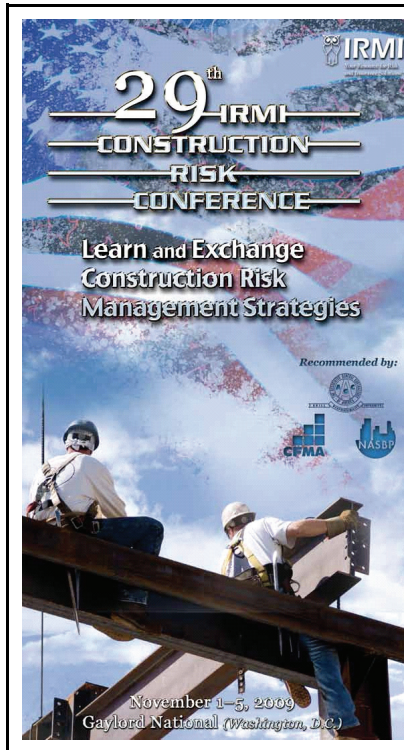
- National Association of State Facilities Administrators
- The Construction Users Roundtable
- Construction Owners Association of America
- Associated General Contractors of America
- Associated Specialty Contractors, Inc.
- Construction Industry Round Table
- American Subcontractors Association, Inc.
- Associated Builders and Contractors, Inc.
- Painting and Decorating Contractors of America
- Lean Construction Institute
- Finishing Contractors Association
- Mechanical Contractors Association of America
- National Electrical Contractors Association
- National Insulation Association
- National Roofing Contractors Association
- Plumbing Heating Cooling Contractors Association
- National Subcontractors Alliance
- Sheet Metal and Air Conditioning Contractors' National Association
- Association of the Wall and Ceiling Industry
- National Association of Electrical Distributors
- National Association of Surety Bond Producers
- The Surety & Fidelity Association of America
- Construction Financial Management Association

Jeff Slivka, ARM, CRIS
Executive Vice President
New Day Underwriting Managers LLC

Mr. Slivka is copresenting Workshop W1, "Filling the Holes in Contractors' Liability Coverages," on Wednesday morning. As the director of the brokerage group of New Day Underwriting, Mr. Slivka brings a strong combination of professional experience, having worked with major brokerage firms, managing agencies, and insurance carriers. He has spent the last 20 years developing his environmental and professional liability underwriting expertise at Aon, Arthur J. Gallagher, and ECS, Inc. In his most recent position as a senior consultant/construction specialist in Aon's Environmental Group, Mr. Slivka served as environmental and professional liability resource for all construction-related business, assisting in the sales and broking of environmental and professional liability insurance programs for all types of construction firms on an international basis. Over the years, Mr. Slivka has assisted approximately 50 percent of the ENR Top 400 Construction firms with managing environmental and/or professional liability. While at ECS/XL Environmental, Mr. Slivka designed/created, underwrote, and managed all types of environmental insurance and construction-related professional liability products. Mr. Slivka received his Bachelor of Science degree in geology from Bloomsburg University of Pennsylvania. He has completed the professional designation of Associate in Risk Management (ARM) and Construction Risk and Insurance Specialist (CRIS) certification, and is pursuing the Chartered Property and Casualty Underwriter (CPCU) designation. He is a member of the Associated General Contractors of America (AGC) and serves on AGC's National Risk Management Committee and Environmental Committee. Mr. Slivka is the environmental and design liability columnist on IRMI.com and has published various articles on environmental and professional liability-related topics.

Notes

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Filling the Gaps in Contractors' Liability Coverages:

Presented by:

Jeff Slivka

Executive Vice President

New Day Underwriting Managers LLC

AGENDA

- **Contractors Professional Liability Insurance**
 - Background
 - Exposures
 - Marketplace
 - Coverage Options
- **Contractors Pollution Liability Insurance**
 - Background
 - Exposures
 - Marketplace
 - Coverage Options

Contractors Professional Liability Insurance (CPrL)

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CPrL BACKGROUND

- Industry advances in past 2 years
 - Contractors pushed/pulled into a professional role:
 - Industry initiatives:
 - LEEDS and other green building initiatives
 - P3
 - BIM
 - Delivery systems/Fast track systems
 - Providing true professional services—direct and indirect
 - Contractors selected on qualifications/experience
 - Standards of care

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CPrL BACKGROUND

- CPrL need recognized in many ways:
 - Increase in CPrL insurance requirements
 - AIA and AGC contract documents
 - Increased awareness/education
 - Insurance community advancement
 - Carriers and products
 - Volume—\$300,000,000 increasing 15 percent per year

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CPrL EXPOSURES

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CPrL EXPOSURES

- Direct/In-house design expertise
- Vicarious professional liability
 - DB or lower-tier specialty trades
 - Incomplete design
- Evaluate, establish, review, and/or assess documents
 - Pre-, during, and post-construction
 - Specifications
- Supervision/Management of subcontractors
 - Inspection of work/services of subs
 - Failure to detect/inspect

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CPrL EXPOSURES

- Means/Methods or temporary work
- Shop drawings

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CPrL MARKETPLACE

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CPrL MARKETPLACE

- Look to the CGL first!
 - Unlimited defense
 - Occurrence-based
 - Lower deductible
- Basic CGL endorsements (see article)
 - CG 22 43—professional liability exclusion endorsement (loosely interpreted)
 - CG 22 34—construction management E&O
 - CG 22 79—construction means and methods endorsement (loosely interpreted)
 - CG 22 80—design build endorsement (loosely interpreted)

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CPrL MARKETPLACE

- Size: \$300,000,000 in premium
- Carriers—20 carriers
 - Major: AIG/Lexington(Charteris), Zurich, XL, CNA
 - Others: Evanston, Great American, RA&MCO, Arch, LIU, Westchester, ACE, Catlin, Travelers
 - London: Beazley UK, Hiscox, ACE UK, Brit Insurance

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CPrL MARKETPLACE

- Products—
 - Professional liability—monoline
 - Combined CPrL/CPL
 - CPrL with protective
 - CPrL with mitigation of loss
- Capacity—
 - Limits: \$100,000,000 combined/\$25,000,000 one carrier
 - Term: practice—annual/project 10 years incl. ERP
- Cost—0 to 5 percent rate decrease
- 2008 Market Update—www.newdayunderwriting.com

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CPrL PRODUCT ALTERNATIVES

- Monoline CPrL
- Combined CPrL/CPL
- Additional coverage parts:
 - Protective coverage
 - Rectification/Mitigation of loss coverage

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Monoline CPrL

- **Description:** Policy provides protection from acts, errors, and omissions in performing professional services.
- Negligence-based
- Claims made
- Direct and vicarious liability
- **Applicability:** All contractors with CPrL exposure
- **Markets:** Lexington, Zurich, Catlin, RA&MCO, CNA, LIU, Arch, Evanston, Travelers, London

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Combined CPrL/CPL

- **Description:** Policy provides protection from acts, errors, and omissions in performing professional services and pollution conditions arising out of contracting operations
- Some are negligence-based, others are not
- Claims-made CPrL, Occurrence/CM-based CPL
- Direct and vicarious liability
- **Applicability:** All contractors with CPrL and contracting exposure
- **Markets:** All

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Protective Coverage

- Optional coverage part under the CPrL
- Indemnity for first-party damages incurred by the contractor excess of the DP's PL insurance
- Contractors under contract with DPs:
 - Design/Build
 - At risk CM
 - Program management
- Subject to SIR—applicable only if DP's limit under the PL is not available
- MIR or minimum insurance requirement
- No restrictions on projects
- **Markets:** Zurich, GAIC, Arch, Catlin

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Rectification/Mitigation of Loss Coverage

- Optional coverage part under the CPrL.
- Affords first-party coverage to the firm for costs incurred to “mitigate a loss” or “rectify” a design defect.
- Does not sit excess of DP’s PL insurance, rather it’s primary coverage subject to deductibles.
- No restrictions on projects.
- Typically offer to larger firms.
- Markets: Zurich, Beazley, Catlin, XL.

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COVERAGE ISSUES

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COVERAGE ISSUES

- Defining professional services
- At-risk CM services
 - Qualifying and quantifying professional services
 - Construction means/methods or temporary work
- Negligence versus non-negligence triggers
- Project policies
- Protective coverage—is there a need?
- Rectification/Mitigation of loss coverage—is there a need?

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COVERAGE ISSUES

- Exclusions:
 - Faulty work
 - Contractual liability
 - Subcontractors
 - Environmental—Mold/Silica/Naturally occurring substances
 - Residential/Condo
 - Separately insured projects
 - Construction means and methods

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CONTRACTORS POLLUTION LIABILITY (CPL) INSURANCE

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CPL BACKGROUND

- Environmental exposures/liability exists with every physical contracting operation performed
- CPL exposures
 - See included Environmental Risk Profile

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CPL MARKETPLACE

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CPL MARKETPLACE

- CGL policy—exclusion widely accepted
- Does coverage exist?
- Absolute vs. Total pollution exclusion
- Carrier specific exclusions

There are benefits but don't count on it!

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CPL MARKETPLACE

- Size: \$850,000,000 premium (30 percent of marketplace)
- Carriers—20+ carriers
 - Major: AIG/Chartis, XL, Zurich, Westchester, ACE USA
 - Others: Great American, Hudson, Evanston, Chubb, Arch, CNA, LIU, Everest, American Safety, James River, Catlin, Travelers
 - New entries: Navigators, Philadelphia, Ironshore, Argonaut, Beazley
- Capacity—
\$300,000,000 total/\$50,000,000 one carrier

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CPL MARKETPLACE

- Premiums—Minimum \$5,000 for \$1,000,000 limit
- Cost: 5 percent–10 percent rate reductions
- Buying motivators
 - Contractually required
 - Soft market savings
 - Rate decreasing
 - Asset protection

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PRODUCT ALTERNATIVES

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PRODUCT ALTERNATIVES

- **Contractors pollution liability**—pollution arising out of contracting operations
- **Pollution legal liability**—pollution on, at, under, or emanating from a designated location owned or operated by an insured

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CPL

- CPL features/benefits:
 - Covered operations
 - Emergency response costs
 - Transportation coverage
 - Non-owned disposal site (NODS) coverage
 - Pollution legal liability coverage (real estate)
 - Mold liability coverage

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CPL

- CPL features/benefits:
 - Fines, penalties, and punitive damages where allowable by law
 - Naturally occurring substances (NOS)
 - Natural resource damages
 - Rented/Leased real estate
 - Project-specific exclusions
 - Retroactive dates

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COVERAGE ISSUES

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COVERAGES ISSUES

- Mold
- Naturally occurring substances—*asbestos, silica, lead, pyrite, mercury, etc.*
- Natural resource damages
- EIFS
- Third-party-over action
- Nonowned disposal sites
- Emergency response costs
- Pollution legal liability

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QUESTIONS?

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