

GETTING THE BEST VALUE FOR YOUR CONTRACTOR'S PROFESSIONAL AND POLLUTION LIABILITY INSURANCE DOLLAR

How can you help your contractor clients get the best value for their insurance dollar? First, provide the necessary documents to your underwriters so that they have a clear understanding of your client's operations. Second, know how the premiums for these lines of insurance are determined. The following article provides this information.

Major Factors Affecting Your Professional And Pollution Liability Premium

Underwriters consider several factors when assessing the probability that your client will have a claim. Let's discuss the six factors we've identified as key drivers that may influence your contractor client's premium.

1. Revenues. We typically use the construction values generated by a contractor for the previous 12-month accounting period to quantify the amount of potential exposure. All values should be reported. But the premium can be affected by providing details on how the values are generated. For example, you should specify what values are generated from operations involving the sale or manufacture of a product since our policy will not provide coverage for this exposure.

2. Determining Liability. One key factor in determining your client's professional liability premium is whether the contractor has direct or vicarious liability for professional design services. We use various categories to assess the potential for professional liability claims. In each category we assess the contractor's [professional responsibility](#), [professional liability](#), [construction and construction management responsibility and liability](#). Each category is then assigned a high, medium or low liability rating for determining a premium. The following includes a list of these categories, the ratings we assign and an explanation.

A. In-house Design with Construction Responsibility - High Liability Rating. This category includes projects where your client's firm is responsible for construction services and performing design work with their own in-house design professionals. Design services performed by in-house architects/engineers present a direct liability exposure since an error, omission or act that causes negligence in the performance of professional services can be the source of a claim against the firm.

B. In-house Design without Construction Responsibility - High Liability Rating. A construction firm sometimes offers the design services of its in-house licensed staff in response to a bid request without performing the subsequent construction. Negligence in the performance of these professional services can lead to a claim against the firm.

C. Subcontracted Design with Construction Responsibility - Medium Liability Rating. When a contracting firm uses a sub-consultant to provide design services, the contractor becomes vicariously liable for those design services. It makes no difference whether the sub-consultant is insured or not, though we strongly recommend your contractor clients use consultants insured for professional and/or pollution liability. When sub-consultants are insured, their insurance coverage may be available in the event of a claim. These exposures are discounted by as much as 67% when compared to your in-house design exposures. However, if the design professional does not have adequate coverage in place, the firm could pay a high liability rating or may not be insurable in this program.

D. Agency Construction Management - Medium Liability Rating. When your client acts as the representative or agent of the owner on a project, they agree to perform a



professional service. That is known as Agency Construction Management. These services can include:

- Obtaining and evaluating bids,
- Preparing contracts,
- Coordinating and scheduling of the work,
- Cost estimating,
- Value engineering and
- Coordination of the construction activities in conjunction with the design drawings and specifications.

Agency Construction Management may or may not be performed in connection with professional design services. But Agency Construction Management never involves taking responsibility for the means, methods and techniques of construction. These exposures are discounted by as much as 70% when compared to your in-house design exposures.

E. At-Risk Construction Management - Medium Liability Rating.

When your client's firm assumes the responsibility for the means, methods and techniques of construction and related work, while also serving as an advisor or facilitator for the owner, they are performing At-risk Construction Management. This advisor or facilitator role is a professional service. Negligent performance of this service can lead to a claim against your client. These exposures are discounted by as much as 60% or more when compared to your in-house design exposures.

F. Construction Responsibility without Design or Construction Management - Low Liability Rating. A professional liability policy provides coverage for defense against a professional liability insurance claim. Though it would seem that a contractor who only performs construction services does not have a professional liability exposure, your contractor clients may need to defend their firm in the event of a claim. In that case, representatives of the CNA/Schinnerer program will investigate the circumstances to determine your client's services and exposures and provide defense coverage as necessary. These exposures are included in the calculation of their insurance premium, but are discounted up to 90% when compared to in-house design exposures.

3. Professional Discipline and Nature of Contracting Operations.

The discipline of the professional services for which your contractor clients have liability is another extremely important indicator of your client's exposure. The rating factor for each discipline is based on actual loss experience of that discipline relative to others. Historically, contractors with a structural engineering exposure have had the most severe claims experience, followed by

soil contractors, general contractors, civil contractors, mechanical/HVAC contractors and electrical contractors.

The nature of the contracting operations of your clients will dictate the pollution liability exposures they face. Use of toxic substances and excavation area activities increase your client's pollution incident exposures.



4. Primary Location of Your Client and Their Projects.

Another important factor in determining your client's premium is the location of their principal office and major projects. We have extensive information regarding claims experience across the nation. As a result, we have developed state rates that reflect the loss characteristics of each state. As you might expect, rates for states having favorable loss experience can be significantly lower than for those having adverse experience. It is

generally the location of your client's principal office that determines the state rate used in developing your premium. However, if a majority of your client's projects are located in other states, a different rate may be used.

5. Project Types and Services. Project type is also a factor in determining insurance premium. Our experience has shown the following types of projects are more likely to produce claims, and possibly more severe claims: condominiums, convention centers, bridges, parking structures, residential areas, dormitories, tunnels and dams. Projects that usually produce more favorable loss results include banks, office buildings and wastewater treatment facilities.

Certain types of services and project types performed by contractors may result in a debit to your client's premium depending on their nature and the amount of revenue derived from them. These include:

- Asbestos abatement or clean up
- Air emissions testing or evaluation
- Condominiums and/or co-ops
- Emergency response or clean up
- Foundation sheeting and shoring
- Ground testing, soil testing and geotechnical services
- Residential, including both single and multifamily units
- Permitting or monitoring related to hazardous waste
- Pollution identification and/or remediation
- Surveys of subsurface conditions

6. Prior Claim Experience. A firm's loss experience can also significantly influence premium. Past claims are sometimes a good predictor of future claim experience, depending on the events surrounding the claims.

Contractors with excellent loss experience can earn premium credits of up to 25%, while contractors with adverse loss experience may have debits of 5% to 100%.

Extreme care goes into developing your client's debit or credit. First, a review is made of all pending and closed claims occurring in the past ten years. We review all claims to determine what, if any, payments were made to plaintiffs. We look to see if any legal expenses were incurred defending these claims on your client's behalf, or whether any reserves have been set. We analyze claim reports, defense counsel opinions, expert witness testimony and other factors for each claim.

Once this information is compiled, we assess your client's loss frequency and severity patterns and calculate your client's loss ratio. The loss ratio is calculated by comparing the amount of money paid for indemnity and claim expense, as a result of claims made against them, plus the total amount reserved for pending claims. The total premium for the past ten years is then divided into the total claim amount. Payments made within your client's deductible are not included in the calculation. This loss ratio is what determines your client's experience credit or debit.

Of Special Note: The Schinnerer and CNA program provides [circumstance reporting](#) and [free pre-claims assistance](#). In the event of an incident or circumstance that may give rise to a claim, your client can report the incident or circumstance. Representatives will then investigate and provide your client with free assistance up to and until the time a claim is made. Often, an incident or circumstance can be resolved satisfactorily before a claim is actually made. Payments made under [circumstance reporting](#) and [free pre-claims assistance](#) do not count against the limit of liability or the self-insured retention, nor are they part of the calculated loss ratio. However, if a circumstance develops into a claim, then the payment would be calculated in your client's loss ratio.

Other Factors That Could Influence Your Premium.

While the previously listed factors are the most critical in determining your firm's potential exposure to claims and the professional and/or pollution liability premium, the following can impact your client's premium.

Loss Prevention and Risk Management Efforts. In our experience, we have noted contractor firms that are proactive in their loss prevention and risk management

efforts seem to have more favorable loss experience and can earn premium credits of up to 25%. Your client's commitment to loss prevention and risk management is demonstrated by the practices established by the firm and should be noted on the application. Good examples include: documentation supporting a commitment to quality, an in-house program of continuing education and the use of industry standard documents.

Coverage Options. Your client's premium is influenced by the limit of liability and self-insured-retention they choose. They can select from many coverage options.

Several important factors to consider when deciding what limit and self-insured-retention your client should carry are: the contractor's revenue, the services performed by the contractor, the location of the firm and the types of projects they deliver. You should also consider the following:

- The maximum [probable](#) and [possible](#) loss the firm may suffer
- The financial ability of the firm to sustain losses and stay in business
- Your client's contractual requirements
- The possibility that more than one claim may be made during the policy period. Ask the following question: will the limit be adequate and can they afford two or more self-insured-retention payments?

There are many factors that can affect the insurance premium your clients pay. Knowing your client and their business practices, taking the time to get specific information and being detail-oriented can help your clients get the right pricing for their coverages. If you provide value to your clients, you will reap many loyal clients and business for years to come.



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